Minnesota Rules of Civil Appellate Procedure
With amendments effective January 1, 2006
Provided by the Minnesota Supreme Court Commissioner's Office

TITLE I. APPLICABILITY OF RULES

TITLE II. APPEALS FROM JUDGMENTS AND ORDERS

TITLE I. APPLICABILITY OF RULES

Rule 101. Scope of Rules; Definitions

101.01 Scope

These rules govern procedure in the Supreme Court and the Court of Appeals of Minnesota in civil appeals; in criminal appeals insofar as the rules are not inconsistent with the Rules of Criminal Procedure; in proceedings for review of orders of administrative agencies, boards or commissions; and on applications for writs or other relief in civil proceedings which the Supreme Court, the Court of Appeals or a justice or judge thereof is competent to give.

101.02 Definitions

Subdivision 1. When used in these rules, the words listed below have the meanings given them.

Subd. 2. "Appellate court" means the Supreme Court pursuant to Minnesota Statutes, chapter 480, or the Court of Appeals pursuant to Minnesota Statutes, chapter 480A.

Subd. 3. "Judge" means a justice of the Supreme Court or a judge of the Court of Appeals.

Subd. 4. "Trial court" means the court or agency whose decision is sought to be reviewed.

Subd. 5. "Clerk of the appellate courts" means the clerk of the Supreme Court and the Court of Appeals.

Subd. 6. "Appellant" means the party seeking review including relators and petitioners.

(Amended effective for appeals taken on or after January 1, 1992.)

Rule 102. Suspension of Rules

In the interest of expediting decision upon any matter before it, or for other good cause shown, the Supreme Court or the Court of Appeals, except as otherwise provided in Rule 126.02,

may suspend the requirements or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

TITLE II. APPEALS FROM JUDGMENTS AND ORDERS

Rule 103. Appeal - How Taken

103.01 Manner of Making Appeal

Subdivision 1. Notice of Appeal and Filings. An appeal shall be made by filing a notice of appeal with the clerk of the appellate courts and serving the notice on the adverse party or parties within the appeal period. The notice shall contain:

(a) a statement specifying the judgment or order from which the appeal is taken; and
(b) the names, addresses, and telephone numbers of opposing counsel, indicating the parties they represent.

The notice shall be accompanied by:

(c) proof of service on the adverse party or parties; and
(d) proof of filing with the administrator of the trial court in which the judgment or order appealed from is entered or filed.

The appellant shall simultaneously file the following with the clerk of the appellate courts:

(1) two copies of the notice of appeal,
(2) a certified copy of the judgment or order from which the appeal is taken,
(3) two copies of the statement of the case required by Rule 133.03, and
(4) a filing fee of $500.

The appellant shall file the following simultaneously with the trial court administrator:

(1) a copy of the notice of appeal, and
(2) the cost bond required by Rule 107, or written waiver of it.

Subd. 2. Relief. When a party in good faith files and serves a notice of appeal from a judgment or an order, and omits, through inadvertence or mistake, to proceed further with the appeal, or to stay proceedings, the appellate court may grant relief on such terms as may be just.

Subd. 3. When Filing Fee Not Required. The filing fees set out in Rule 103.01, subdivision 1, shall not be required when:

(a) the appellant has been authorized to proceed without payment of the filing fee pursuant to Rule 109; or
(b) the appellant is represented by a public defender's office or a legal aid society; or

(c) the appellant is a party to a proceeding pursuant to Minnesota Statutes, chapter 253B; or

(d) the appellant is the state or a governmental subdivision of the state or an officer, employee or agency thereof; or

(e) the appeal has been remanded to the trial court or agency for further proceedings and, upon completion of those proceedings, the appeal is renewed; or

(f) the appellant is a party to a public assistance appeal pursuant to Minnesota Statutes, chapter 256; or

(g) the appeal is taken by a claimant for unemployment compensation benefits pursuant to Minnesota Statutes, chapter 268.

(Amended effective March 1, 2001.)

Comment - 1983

Filing the notice of appeal with the clerk of the appellate courts, in addition to service on the adverse party, is required to initiate an appeal.

A substantial change has been made in Rule 103.01. Under the new rule service alone no longer initiates an appeal. The notice of appeal served on both the adverse party and the clerk of the trial court and filed with the clerk of the appellate courts is required in order to vest jurisdiction in the Court of Appeals.

Proof of service, a certified copy of the judgment or order from which the appeal is taken, and the statement of the case (described at Rule 133.03) must accompany the notice of appeal when it is filed. For purposes of these rules, filing is timely if the notice of appeal is deposited in the mail within the time fixed for filing. See Rule 125.01.

A change has been made in the amount of the filing fee and to which courts it is paid.

Since prehearing conferences will be held only if the court so directs, within 10 days after filing the notice of appeal the appellant must send to the clerk of the appellate courts a written order for the transcript or a notice of intent to proceed on a statement of the proceedings. See Rule 110.02.

See Appendix for form of notice of appeal (Forms 103A and 103B) and statement of the case (Form 133).

Advisory Committee Comment - 1998 Amendments

The additional language in the first paragraph of the rule is intended to clarify the steps that must be taken to invoke appellate jurisdiction. Timely filing the notice of appeal with the clerk of the appellate courts and timely service on the adverse party are the jurisdictional steps required to initiate an appeal. Failure of an appellant to take any step other than the timely filing and service of the notice of appeal does not affect appellate jurisdiction, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the

appeal. The reference to supersedeas bonds previously contained in the rule has been deleted, in light of the concurrent revisions made to Rule 108, which clarify the timing and procedure regarding filing supersedeas bonds.

103.02 Joint Appeals

Subdivision 1. Joint Appeals. If two or more parties are entitled to appeal from a judgment or order or to petition for certiorari in the same action and their interests are such as to make joinder practicable, they may file a joint notice of appeal or petition, or may join in the appeal after filing separate timely notices of appeal or petitions for certiorari, and they may then proceed on appeal as a single appellant.

Subd. 2. Consolidated Appeals. Appeals in separate actions may be consolidated by order of the appellate court on its own motion or upon motion of a party.

103.03 Appealable Judgments and Orders

An appeal may be taken to the Court of Appeals:

(a) from a final judgment, or from a partial judgment entered pursuant to Minn. R. Civ. P. 54.02;

(b) from an order which grants, refuses, dissolves or refuses to dissolve, an injunction;

(c) from an order vacating or sustaining an attachment;

(d) from an order denying a new trial, or from an order granting a new trial if the trial court expressly states therein, or in a memorandum attached thereto, that the order is based exclusively upon errors of law occurring at the trial, and upon no other ground; and the trial court shall specify such errors in its order or memorandum, but upon appeal, such order granting a new trial may be sustained for errors of law prejudicial to respondent other than those specified by the trial court;

(e) from an order which, in effect, determines the action and prevents a judgment from which an appeal might be taken;

(f) from a final order or judgment made or rendered in proceedings supplementary to execution;

(g) except as otherwise provided by statute, from a final order, decision or judgment affecting a substantial right made in an administrative or other special proceeding;

(h) from an order that grants or denies modification of custody, visitation, maintenance, or child support provisions in an existing judgment or decree;

(i) if the trial court certifies that the question presented is important and doubtful, from an order which denies a motion to dismiss for failure to state a claim upon which relief can be granted or from an order which denies a motion for summary judgment; and

(j) from such other orders or decisions as may be appealable by statute or under the decisions of the Minnesota appellate courts.

(Amended effective March 1, 2001.)

Comment - 1983

An order for judgment is not an appealable order. There is a right of appeal only from a judgment or an order enumerated in Rule 103.03. An appeal from any order not specifically included in Rule 103.03 is discretionary, and permission must be sought by petition as provided in Rule 105.

Two substantial changes have been made in Rule 103.03. The deletion from clause (a) of "order for judgment" marks a return to former practice: a judgment is appealable; an order for judgment is not appealable. Because of the uncertainties resulting from its broad, unspecific language, former clause (d) "From an order involving the merits of the action or some part thereof" has also been deleted. Review of any order not specifically enumerated in Rule 103.03 is discretionary only, and permission to appeal must be sought pursuant to Rule 105.

Advisory Committee Comment - 1998 Amendments

While Rule 103.03 contains a nearly exhaustive list of appealable orders and judgments, it is not the exclusive basis for appellate jurisdiction. See In re State & Regents Bldg. Asbestos Cases, 435 N.W.2d 521 (Minn. 1989); Anderson v. City of Hopkins, 393 N.W.2d 363 (Minn. 1986). In these and other cases, the Minnesota Supreme Court has recognized that there are certain instances in which an appeal may be allowed as a matter of right even though the ground for that appeal is not found expressly in the provisions of Rule 103.03. Such instances include:

Orders granting or denying motions to dismiss or for summary judgment when the motions are based on the trial court's alleged lack of personal or subject matter jurisdiction, regardless of whether the motion seeks dismissal of the entire action. See McGowan v. Our Savior's Lutheran Church, 527 N.W.2d 830, 833 (Minn. 1995)(order denying summary judgment is appealable when motion is based on district court's lack of subject matter jurisdiction); Hunt v. Nevada State Bank, 285 Minn. 77, 88-89, 172 N.W.2d 292, 298 (1996) (order denying motion to dismiss for lack of personal jurisdiction immediately appealable of right).

Orders denying motions to dismiss or for summary judgment based on governmental immunity from suit, provided that the denial is not based on the existence of a question of fact. See Anderson, 393 N.W.2d at 364 (order denying defendant's motion for summary judgment is appealable when motion is based on governmental immunity from suit); Carter v. Cole, 526 N.W.2d 209 (Minn. App. 1995), aff'd, 539 N.W.2d 241 (Minn. 1995) (affirming dismissal of appeal from order denying government official's motion for summary judgment based solely on the finding that there is a genuine issue of material fact whether the official committed the acts alleged; reserving question of appealability of an order denying summary judgment where the genuine issues of material fact identified by the trial court are related to the issue of immunity, and not to the merits of the claim); see also Johnson v. Jones, 515 U.S. 304, 115 S. Ct. 2151, 132 L.Ed.2d 238 (1995) (order denying summary judgment on immunity grounds not appealable where motion is denied because of genuine issue of material fact).

Orders vacating final orders or judgments, when the orders are issued after the time to appeal the underlying orders or judgments has expired, or from orders refusing to vacate default judgments. See State & Regents, 435 N.W.2d at 522 (order vacating final judgment is appealable); Spicer v. Carefree Vacations, Inc., 370 N.W.2d 424 (Minn. 1985)(denial of a Rule 60 motion is appealable if the judgment is rendered ex parte against a party who has made no appearance). But see Carlson v. Panuska, 555 N.W.2d 745 (Minn. 1996) (Spicer exception applies only to true default judgments and not to "default" judgments entered after contested hearings for failure to comply with discovery orders).

In addition, certain statutes provide for appeals as a matter of right, even though Rule 103.03 does not expressly provide. See, e.g., Minnesota Statutes, section 572,26, subdivision 1 (listing appealable orders in arbitration proceedings, which are not "special" proceedings under Rule 103.03), Pulju v. Metropolitan Property & Cas., 535 N.W.2d 608 (Minn. 1995).

These examples are not intended to be exhaustive, but rather to emphasize that there are limited grounds for appeal other than those set forth in Rule 103.03. See generally Scott W. Johnson, Common Law Appellate Jurisdiction, BENCH & BAR OF MINN., Sept. 1997, at 31.

Advisory Committee Comment - 2000 Amendments

Rule 103.03 is amended to add a new subdivision (h) and renumber existing paragraphs (h) and (i) to become (i) and (j). The purpose of this amendment is to clarify that orders that grant or deny modification of custody, visitation, maintenance, and support provisions are appealable in accordance with Angelos v. Angelos, 367 N.W.2d 518 (Minn. 1985). These orders are appealable under paragraph (g) (final order in a special proceeding), but because of the volume of such orders, as well as the frequent involvement of pro se litigants, the Committee believes an explicit provision will minimize confusion. This change is not intended to expand appealability of otherwise unappealable orders, but rather, is meant to have the rule correctly identify these orders as appealable.

103.04 Scope of Review

The appellate courts may reverse, affirm or modify the judgment or order appealed from or take any other action as the interest of justice may require.

On appeal from or review of an order the appellate courts may review any order affecting the order from which the appeal is taken and on appeal from a judgment may review any order involving the merits or affecting the judgment. They may review any other matter as the interest of justice may require. The scope of review afforded may be affected by whether proper steps have been taken to preserve issues for review on appeal, including the existence of timely and proper post-trial motions.

(Amended effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendments

The rule has been changed to make clear that the scope of review can and often does depend upon the scope of the trial proceedings. As a general proposition, appellate review is limited to review of the facts and legal arguments that are contained in the trial record. The conduct of the trial proceedings will affect the scope of review on appeal. See Sauter v. Wasemiller, 389 N.W.2d 200 (Minn. 1986); Northwestern State Bank v. Foss, 287 Minn. 508, 511, 177 N.W.2d 292, 294 (1970). This is true notwithstanding the broad statement of the appellate courts' scope of review contained in Rule 103.04. See Minnesota Constitution, article 6, section 2.

Litigants often fail to recognize the importance of post-trial motions, and the sometimes dramatic failure to bring them. Though commentators have alerted lawyers to this issue, see 3 ERIC J. MAGNUSON & DAVID F. HERR, MINNESOTA PRACTICE: APPELLATE RULES ANNOTATED, section 103.17 (3d ed. 1996), problems associated with failure to file appropriate post-trial motions continues to be a significant, recurring problem. This rule amendment is intended to ameliorate the problem.

Rule 104. Time for Filing and Service of Notice of Appeal

104.01 Time for Filing and Service

Subdivision 1. Time for Appeal. Unless a different time is provided by statute, an appeal may be taken from a judgment within 60 days after its entry, and from an appealable order within 60 days after service by any party of written notice of its filing.

An appeal may be taken from a judgment entered pursuant to Rule 54.02, Minnesota Rules of Civil Procedure, within 60 days of the entry of the judgment only if the trial court makes an express determination that there is no just reason for delay and expressly directs the entry of a final judgment. The time to appeal from any other judgment entered pursuant to Rule 54.02 shall not begin to run until the entry of a judgment which adjudicates all the claims and rights and liabilities of the remaining parties.

Subd. 2. Effect of Post-Decision Motions. Unless otherwise provided by law, if any party serves and files a proper and timely motion of a type specified immediately below, the time for appeal of the order or judgment that is the subject of such motion runs for all parties from the service by any party of notice of filing of the order disposing of the last such motion outstanding. This provision applies to a proper and timely motion:

(a) for judgment as a matter of law under Minn. R. Civ. P. 50.02;
(b) to amend or make findings of fact under Minn. R. Civ. P. 52.02, whether or not granting the motion would alter the judgment;
(c) to alter or amend the judgment under Minn. R. Civ. P. 52.02;
(d) for a new trial under Minn. R. Civ. P. 59;
(e) for relief under Minn. R. Civ. P. 60 if the motion is filed within the time for a motion for new trial; or

(f) in proceedings not governed by the Rules of Civil Procedure, a proper and timely motion that seeks the same or equivalent relief as those motions listed in (a)-(e).

Subd. 3. Premature Appeal. A notice of appeal filed before the disposition of any of the above motions is premature and of no effect, and does not divest the trial court of jurisdiction to dispose of the motion. A new notice of appeal must be filed within the time prescribed to appeal the underlying order or judgment, measured from the service of notice of filing of the order disposing of the outstanding motion. If a party has already paid a filing fee in connection with a premature appeal, no additional fee shall be required from that party for the filing of a new notice of appeal or notice of review pursuant to *Rule 106*.

(Amended effective January 1, 2006.)

Comment - 1983

The time for taking an appeal from a final judgment or an order remains unchanged.

The clerk of the appellate courts is authorized to reject the filing of a notice of appeal from a judgment after the expiration of the 90-day period.

The second paragraph follows federal practice with respect to judgments ordered pursuant to Rule 54.02, Minnesota Rules of Civil Procedure. An early right of appeal is provided as to those summary judgments that dispose of less than all claims against all parties if, but only if, the trial court expressly determines that there is no just reason for delay and expressly directs the entry of judgment. If an appeal is not taken within 90 days after entry of such a judgment, it becomes final and is not subject to later review. A judgment disposing of less than all claims against all parties entered pursuant to an order which does not contain the express determination and directions prescribed by Rule 54.02 is not appealable until entry of the final judgment disposing of all remaining claims of all parties.

This limited right of appeal recognizes that the trial court's use of the language prescribed by Rule 54.02 is likely to be confined to two situations: (1) where early review of the applicability of a rule of law may obviate a retrial, or (2) where the party obtaining judgment should not be required to await the conclusion of the case as to other parties and issues before the time for appeal begins to run.

Advisory Committee Comment - 1998 Amendments

The 1998 amendments to this rule will significantly affect appellate practice. The rule is intended to simplify practice by establishing a 60-day period to effect appeals from both final judgments and appealable orders. This 60-day period will not necessarily result in an identical period to appeal from both an order and judgment, as the event that begins the running of the respective 60-day appeal periods usually will differ. However, the amendment will result in less confusion regarding the time period for appeal.

Subdivision 2 is new and enumerates the post-trial motions that will toll the running of the time to appeal. The rule serves two equally important purposes: to make it clear that an appeal is not necessary until the proper motion is decided, and to avoid a party's erroneous assumption that an improper or unauthorized motion would prevent the running of an appeal deadline. The list is intended to be exhaustive for civil actions in the district courts. Rule 104.01, subd. 2(f), provides that the procedural counterparts of these motions will also prevent the running of the time to appeal until the motion is decided. The motions enumerated in this subdivision exclude "motions for reconsideration" because these motions are never required by the rules and are considered only if the trial court permits the motion to be filed. See MINN. GEN. R. PRAC. 115.11, amended in 1997, effective Jan. 1, 1998.

Counsel must carefully determine whether post-trial motions are authorized in certain proceedings. See Schiltz v. City of Duluth, 449 N.W.2d 439 (Minn. 1990) (in special proceedings there must be statutory authority for new trial motions, and in the absence of such provision, a "new trial" motion, even if considered by the trial court on the merits and denied, may not result in an appealable order) and Steeves v. Campbell, 508 N.W.2d 817 (Minn. App. 1993) (new trial motion in order for protection proceedings not authorized, and order denying such motion is not appealable). Subdivision 2 of Rule 104.01 replaces Rule 104.04 concerning post-trial and modification motions in marital dissolutions. Modification motions no longer extend the time in which to appeal. The affect of post-trial motions is clarified in subdivisions 2 and 3.

Advisory Committee Comment—2006 Amendment

Rule 104.01, subd. 2(a) is amended to reflect the new name for a motion challenging the legal sufficiency of a verdict under Minn. R. Civ. P. 50.02. As a result of the amendment to Minn. R. Civ. P. 50.02, the former "motion for directed verdict" and "motion for judgment notwithstanding the verdict" are both now referred to as motions for "judgment as a matter of law." Rule 104.01, subd. 2(a) is amended to reflect this nomenclature. During the short transition period during which timely appeals might be taken from cases where either motions for judgment notwithstanding the verdict or motions for judgment as a matter of law may have been filed after the trial court decision, the court should consider the two motions fungible in determining whether an appeal is timely.

104.02 Effect of Entry of Judgment and Insertion of Costs into the Judgment

No order made prior to the entry of judgment shall be appealable after the expiration of time to appeal from the judgment. Time to appeal from the judgment pursuant to this section shall not be extended by the subsequent insertion therein of costs and disbursements.

(Amended effective January 1, 1999.)

104.03 and 104.04 (Deleted effective January 1, 1999.)

Rule 105. Discretionary Review

105.01 Petition for Permission to Appeal; Time

Upon the petition of a party, in the interests of justice the Court of Appeals may allow an appeal from an order not otherwise appealable pursuant to Rule 103.03 except an order made during trial, and the Supreme Court may allow an appeal from an order of the Tax Court or the Workers' Compensation Court of Appeals not otherwise appealable pursuant to Rule 116 or governing statute except an order made during trial. The petition shall be served on the adverse party and filed within 30 days of the filing of the order. The trial court should be notified that the petition has been filed and provided with a copy of the petition and any response. Four copies of the petition shall be filed with the clerk of the appellate courts, but the court may direct that additional copies be provided. A filing fee of $500 paid to the clerk of the appellate courts shall accompany the petition for permission to appeal.

(Amended effective March 1, 2001.)

Comment - 1983

A petition for discretionary review must be filed with the clerk of the appellate courts within 30 days after filing of the order.

Because a request for discretionary review of an interlocutory or other nonappealable order is usually prompted by some exigency and because it is not customary to give notice of making and filing of nonappealable orders, a petition for review must be served and filed with the clerk of the appellate courts within 30 days after the order was filed with the clerk of the trial court.

See Appendix for form of petition for discretionary review (Form 105).

105.02 Content of Petition; Response

The petition shall be entitled as in the trial court, shall not exceed ten typewritten pages, and shall contain:

(a) a statement of facts necessary to an understanding of the questions of law or fact determined by the order of the trial court;
(b) a statement of the issues; and
(c) a statement why an immediate appeal is necessary and desirable.

A copy of the order from which the appeal is sought and any findings of fact, conclusions of law, or memorandum of law relating to it shall be attached to the petition. Any adverse party may, within five days after service of the petition, serve and file with the clerk of the appellate courts four copies of a response to the petition, which shall not exceed ten pages. Any reply shall be served within two days after service of the response and shall not exceed five pages. All

papers may be typewritten in the form prescribed in Rule 132.02. No additional memoranda may be filed without leave of the appellate court.

The petition and any response shall be submitted without oral argument unless otherwise ordered.

(Amended effective March 1, 2001.)

Advisory Committee Comment - 1998 Amendments

The rule has been amended to change the responsive time from seven to five days to be consistent with the time to file a response to a petition for an extraordinary writ and to a motion. See MINN. R. CIV. APP. P. 120.02, 127. The two-day period to file a reply is added to be consistent with the provision for a reply in the rule on motions. See MINN. R. CIV. APP. P. 127. Because intervening weekends and holidays are not counted when the time for response is less than seven days, the change will not shorten the time for response, and may actually lengthen it in some cases. See MINN. R. CIV. APP. P. 126.01.

Advisory Committee Comment - 2000 Amendments

Rule 105.01 *is changed to authorize petitions to the Supreme Court seeking discretionary review of nonappealable orders of the Tax Court and the Workers' Compensation Court of Appeals. The Court has noted the advisability of such a provision. See Tarutis v. Commissioner of Revenue, 393 N.W.2d 667, 668-69 (Minn. 1986). The amendment to* Rule 105.02 *clarifies that the petition should not be accompanied by a separate memorandum of law, expands the page limit for the petition to ten pages and specifies page limits for the response and reply.*

105.03 Grant of Permission – Procedure

If permission to appeal is granted, the clerk of the appellate courts shall notify the trial court administrator and the appellant shall file the bond as required by these rules, and then proceed as though the appeal had been noticed by filing an appeal. Two copies of a completed statement of the case shall be filed within five days of the order granting the petition. The time fixed by these rules for transmitting the record and for filing the briefs and appendix shall run from the date of the entry of the order granting permission to appeal.

(Amended effective for appeals taken on or after January 1, 1992.)

Comment - 1983

The filing of 2 copies of a completed statement of the case is required within 5 days from the date of the order granting the petition for discretionary review.

Rule 106. Respondent's Right to Obtain Review

A respondent may obtain review of a judgment or order entered in the same action which may adversely affect respondent by filing a notice of review with the clerk of the appellate courts. The notice of review shall specify the judgment or order to be reviewed, shall be served and filed within 15 days after service of the notice of appeal, and shall contain proof of service. A filing fee of $100 shall accompany the notice of review.

(Amended effective January 1, 1999.)

Comment - 1983

A respondent must file a notice of review with the clerk of the appellate courts within 15 days after service on the respondent of the notice of appeal.

See Appendix for form of notice of review (Form 106).

Advisory Committee Comment - 1998 Amendments

This rule is amended to delete gender-specific language. This amendment is not intended to affect the interpretation and meaning of the rule.

Rule 107. Bond or Deposit for Costs

107.01 When Bond Required

Unless the appellant is exempt by law, a bond shall be executed by, or on behalf of, the appellant. The bond shall be conditioned upon the payment of all costs and disbursements awarded against the appellant on the appeal, not exceeding the penalty of the bond which shall be $500. In lieu of the bond, the appellant may deposit $500 with the trial court administrator as security for the payment.

Prior to filing the notice of appeal, the appellant may move the trial court for an order waiving the bond or setting a lesser amount or deposit. Upon the appellant's filing of the required cost bond or deposit, the respondent may move the trial court for an order requiring a supplemental bond or deposit.

The bond or deposit may be waived by written consent of the respondent, which consent shall be filed with the trial court administrator.

(Amended effective March 1, 2001.)

107.02 When Bond Not Required

No cost bond is required:

(a) in a criminal case; or
(b) in a case arising in juvenile court; or
(c) in a proceeding pursuant to Minnesota Statutes, chapter 253B; or
(d) when the appellant has been authorized to proceed without a cost bond pursuant to Rule 109; or
(e) when the appellant is the state or a governmental subdivision of the state or an officer, employee or agency thereof; or
(f) when the appellant is a party to a public assistance appeal pursuant to Minnesota Statutes, chapter 256; or
(g) when the appellant is a reemployment insurance benefits claimant pursuant to Minnesota Statutes, chapter 268.

(Amended effective March 1, 2001.)

Comment—1983

A cost bond in the amount of $500 or a stipulation waiving the bond must be filed with the notice of appeal. See Rule 103.01, subdivision 1(d)(6). Rule 107 provides a mechanism for securing, prior to appeal, an order from the trial court waiving the bond or setting a bond in a lesser amount. It also affords the respondent a mechanism for securing a supplemental bond or deposit. Finally, it enumerates the categories of appeals in which a cost bond is not required.

Advisory Committee Comment - 1998 Amendments

Under this rule as revised, the cost bond requirement is not automatically waived when an appeal is filed after a remand. Unless the cost bond from the first appeal remains on deposit, the respondent in the second appeal still needs the protection of a cost bond. Changes in (g) reflect the current terminology.

Rule 108. Supersedeas Bond; Stays

108.01 Supersedeas Bond

Subdivision 1. Effect of Appeal; Stay. Except in appeals under Rule 103.03 (b), or as otherwise provided by law, the filing of a proper and timely appeal suspends the authority of the trial court to make any order necessarily affecting the order or judgment appealed from. The trial court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from, and to enforce its order or judgment.

Unless otherwise provided by law, a proper and timely appeal does not stay an order or judgment or enforcement proceedings in the trial court, but the appellant may obtain a stay by providing a supersedeas bond or other security in the amount and form which the trial court shall order and approve, in the cases provided in this rule, or as otherwise provided by rule or statute.

An application to approve a supersedeas bond, or for a stay on other terms, shall be made in the first instance to the trial court. Upon motion, the appellate court may review the trial court's determination as to whether a stay is appropriate and the terms of any stay.

A supersedeas bond, whether approved by the trial court or appellate court, shall be filed in the trial court.

Subd. 2. If the appeal is from an order, the condition of the bond shall be the payment of the costs of the appeal, the damages sustained by the respondent in consequence of the appeal, and the obedience to and satisfaction of the order or judgment which the appellate court may give if the order or any part of it is affirmed or if the appeal is dismissed.

Subd. 3. If the appeal is from a judgment directing the payment of money, the condition of the bond shall be the payment of the judgment or that part of the judgment which is affirmed and all damages awarded against the appellant upon the appeal if the judgment or any part of it is affirmed or if the appeal is dismissed.

Subd. 4. If the appeal is from a judgment directing the assignment or delivery of documents or personal property, the condition of the bond shall be the obedience to the order or judgment of the appellate court. No bond pursuant to this subdivision is required if the appellant places the document or personal property in the custody of the officer or receiver whom the trial court may appoint.

Subd. 5. If the appeal is from a judgment directing the sale or delivery of possession of real property, the condition of the bond shall be the payment of the value of the use and occupation of the property from the time of the appeal until the delivery of possession of the property if the judgment is affirmed and the undertaking that the appellant shall not commit or suffer the commission of any waste on the property while it remains in the appellant's possession during the pendency of the appeal.

Subd. 6. In appeals brought pursuant to Rule 115, the trial court may upon motion grant a stay of the order, judgment or enforcement proceedings upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

Subd. 7. In cases not specified in subdivisions 2 to 6, filing the bond specified in Rule 107 shall stay proceedings in the trial court.

Subd. 8. Upon motion, the trial court may require the appellant to file a supersedeas bond if it determines that the provisions of Rule 108 do not provide adequate security to the respondent.

(Amended effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendments

The 1998 revisions to Rule 108 make explicit a number of principles regarding appellate jurisprudence previously found in case law. First, the mere filing of an appeal does not, except where provided by statute, rule, or case law, stay proceedings in the trial court to enforce the judgment or order which has been appealed. Second, while an appeal may (with some exceptions) suspend the authority of the trial court to modify the order or judgment appealed from, the suspension of the trial court's jurisdiction is not all-encompassing. Generally, the trial court retains authority to enforce the judgment, and to consider and rule on matters that are supplemental or collateral to the judgment. If there is uncertainty about the scope of the trial court's ongoing jurisdiction, a motion to resolve the question may be directed to the appellate court.

The posting of a supersedeas bond or a request for stay on other grounds is not required for an appeal to be perfected or proceed. However, because the order or judgment that is the subject of the appeal is not generally stayed automatically, a matter may, in some circumstances, become moot while the appeal is pending. Under prior practice, stays in appellate proceedings relating to administrative agency decisions were obtained under Minnesota Statutes, section 14.65 (1996).

The revisions also set out more clearly the procedure for obtaining a stay. Application for the stay is made in the first instance to the trial court, and not the appellate court. The bond, whether approved by the trial court, or upon review by the appellate court, is still filed in the trial court, and the rule now so specifies.

108.02 Judgments Directing Conveyances

If the appeal is from a judgment directing the execution of a conveyance or other instrument, its execution shall not be stayed by an appeal until the instrument is executed and deposited with the trial court administrator to abide the judgment of the appellate court.

(Amended effective for appeals taken on or after January 1, 1992.)

108.03 Extent of Stay

When a bond is filed as provided by Rule 108.01, it shall stay all further proceedings in the trial court upon the judgment or order appealed from or the matter embraced in it; but the trial court may proceed upon any other matter included in the action and not affected by the judgment or order from which the appeal is taken.

108.04 Respondent's Bond to Enforce Judgment

Notwithstanding an appeal from a money judgment and security given for a stay of proceedings thereon, the trial court, on motion and notice to the adverse party, may grant leave to the respondent to enforce the judgment upon his filing the bond herein provided, if it be made to

appear to the satisfaction of the trial court that the appeal was taken for the purpose of delay. The bond shall be executed by, or on behalf of, the respondent and shall be conditioned that, if the judgment is reversed or modified, the respondent will make any restitution the appellate court directs.

108.05 Joinder of Bond Provisions; Service on Adverse Party

The bonds provided for in Rule 107 and Rule 108.01 may be in one instrument or several, at the option of the appellant, and shall be served on the adverse party.

108.06 Perishable Property

If the appeal is from a judgment directing the sale of perishable property, the trial court may order the property to be sold and the proceeds deposited or invested to abide the judgment of the appellate court.

108.07 Effect of Proceedings in Supreme Court

Where a petition to the Supreme Court for review of a decision of the Court of Appeals is filed or a case is transferred to the Supreme Court pursuant to these rules, and a supersedeas bond has previously been filed to stay the trial court proceedings, the bond shall remain in full force and effect during the pendency of the review unless otherwise ordered by the Supreme Court. The Supreme Court may make any other order appropriate to preserve the status quo or to promote the effectiveness of any judgment which may subsequently be entered.

Rule 109. Leave to Proceed *In Forma Pauperis*

109.01 Authorized Relief

A party who is unable to pay the expenses of appeal may apply for leave to proceed *in forma pauperis*, which may include waiver of the filing fee and cost bond, and payment of costs for the transcript and reproducing briefs.

(Adopted effective March 1, 2001.)

109.02 Motion for Leave to Proceed *In Forma Pauperis* in the Court of Appeals

A party who desires to proceed *in forma pauperis* in the Court of Appeals shall file in the trial court a motion for leave so to proceed, together with an affidavit showing the party's inability to pay fees and costs and a copy of the party's statement of the case as prescribed by Rule 133.03, showing the proposed issues on appeal. Any such motion by a party initiating an appeal shall be filed on or before the date the appeal is commenced. The trial court shall rule on the motion within 15 days after it is filed, unless the Court of Appeals grants additional time. The party shall file a copy of the motion with the clerk of the appellate courts simultaneously with the notice of appeal or the petition that initiates the appeal.

The trial court shall grant the motion if the court finds that the party is indigent and that the appeal is not frivolous. If the motion is denied, the trial court shall state in writing the reasons for the denial. The party shall promptly file a copy of the trial court's order on the motion with the clerk of the appellate courts.

If the trial court grants the motion, the party may proceed *in forma pauperis* without further application to the Court of Appeals. If a transcript is to be prepared for appeal, the party shall file the certificate as to transcript required by Rule 110.02, subdivision 2(a), within 10 days from the date of the trial court administrator's filing of the order granting leave to proceed *in forma pauperis* or within 10 days after filing the notice of appeal, whichever is later.

If the trial court denies the motion, the party shall, within 10 days from the date of the trial court administrator's filing of the order, either:

(a) pay the filing fee, post the cost bond, and file a completed transcript certificate, if a transcript is required; or

(b) serve and file a motion in the Court of Appeals for review of the trial court's order denying *in forma pauperis* status. The record on the motion shall be limited to the record presented to the trial court.

(Adopted effective March 1, 2001.)

109.03 Civil Commitment and Juvenile Proceedings

A motion to proceed *in forma pauperis* on appeal from a civil commitment or juvenile proceeding may be granted based on the party's financial inability to pay appeal expenses alone. A finding that the appeal is not of a frivolous nature is not required.

(Adopted effective March 1, 2001.)

109.04 Motion for Leave to Proceed *In Forma Pauperis* in the Supreme Court

A party who desires to proceed *in forma pauperis* in the Supreme Court shall file in that court a motion for leave so to proceed. Any such motion by a party initiating an appeal shall be filed on or before the date the Supreme Court proceeding is commenced. The motion shall specify the fees and costs for which *in forma pauperis* relief is sought. The motion shall be accompanied by:

(a) a copy of the order, if any, granting the party leave to proceed *in forma pauperis* in the court whose decision is to be reviewed by the Supreme Court and an affidavit stating that the party remains indigent; or

(b) an affidavit showing the party's inability to pay the fees and costs for which relief is sought.

(Adopted effective March 1, 2001.)

109.05 Suspension of Time Periods

The time periods for a party to pay the filing fee, post a cost bond, and file a transcript certificate are suspended during the pendency of that party's timely motion to proceed *in forma pauperis*.

(Adopted effective March 1, 2001.)

Advisory Committee Comment - 2000 Amendments

Rule 109 *is a new rule, adopted in 2000. It is intended to collect and harmonize various provisions that apply to the procedure for in forma pauperis appeals. It is not intended to establish or modify any substantive rights to proceed in forma pauperis.*

The rule requires that the application to proceed in forma pauperis in the Court of Appeals be submitted to the trial court for appropriate factual determinations. This requirement is consistent with the long-standing practice of the Court of Appeals. See, e.g., Maddox v. Department of Human Servs., 400 N.W.2d 136, 139 n.1 (Minn. App. 1987). This requirement is consistent with the general preference of having trial courts, rather than appellate courts, make factual findings, and also obviates any appearance that the appellate court has prejudged the merits of the appeal before the transcript, record and briefs have been prepared. Even without a transcript or briefs, the trial court will be familiar with the issues raised by the parties and may be familiar with their financial resources, and is, therefore, better able to make the required findings early in the appellate process. MINN. STAT. § 563.01, subd. 3 defines "indigence" to include those receiving public assistance, being represented by a legal services attorney or volunteer attorney program on the basis of indigence, or having an annual income not greater than 125% of the poverty level. See 42 U.S.C. § 9902(2).

The requirement that a party seeking in forma pauperis relief establish that his or her appeal (or position on appeal, if such relief is being sought by a respondent) is "not frivolous" does not require a showing that the party is likely to prevail on appeal and does not require the trial court to evaluate the likelihood of success on appeal. In forma pauperis status in civil commitment and juvenile proceedings is based solely on indigency, and an indigent party is not required to establish that the position to be taken in the appellate court is not frivolous.

Rule 109.04 *establishes procedures for seeking leave to proceed in forma pauperis in the Supreme Court. It permits a motion based on an order granting in forma pauperis status from the court whose decision is to be reviewed if accompanied by an affidavit that the party remains indigent.*

Rule 109.05 *provides for the suspension of the time periods to pay the filing fee, post a bond and file the transcript certificate while the trial court considers a motion to proceed in forma pauperis. A party who has made a timely motion to proceed in forma pauperis must file a copy of*

that motion with the appeal papers. The trial court must rule on the motion promptly and the party must inform the appellate court of the ruling, so that the appeal can proceed without delay.

Rule 110. The Record on Appeal

110.01 Composition of the Record on Appeal

The papers filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.

110.02 The Transcript of Proceedings; Duty of Appellant to Order; Notice to Respondent if Partial Transcript is Ordered; Duty of Reporter; Form of Transcript

Subdivision 1. Duty to Order Transcript. Within 10 days after filing the notice of appeal, the appellant shall:

(a) pursuant to subdivision 2 of this rule, order from the reporter a transcript of those parts of the proceedings not already part of the record which are deemed necessary for inclusion in the record; or

(b) file a notice of intent to proceed pursuant to Rule 110.03 or Rule 110.04; or

(c) notify the respondent in writing that no transcript or statement will be ordered or prepared.

If the entire transcript is not to be included, the appellant, within the 10 days, shall file and serve on the respondent a description of the parts of the transcript which appellant intends to include in the record and a statement of the issues intended to be presented on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary, respondent shall order, within 10 days of service of the description or notification of no transcript, those other parts from the reporter, pursuant to subdivision 2 of this rule, or serve and file a motion in the trial court for an order requiring the appellant to do so. A copy of any order of the trial court affecting the transcript shall be filed by the appellant with the clerk of the appellate courts.

Subd. 2. Transcript Certificates. (a) If any part of the proceedings is to be transcribed by a court reporter, a certificate as to transcript signed by the designating counsel and by the court reporter shall be filed with the clerk of the appellate courts, with a copy to the trial court and all counsel of record within 10 days of the date the transcript was ordered. The certificate shall contain the date on which the transcript was requested; the estimated number of pages; the estimated completion date not to exceed 60 days; a statement that satisfactory financial arrangements have been made for the transcription; and the court reporter's address and telephone number.

(b) Upon filing of the transcript with the trial court administrator and delivery to counsel of record, the reporter shall file with the clerk of the appellate courts a certificate of filing and delivery. The certificate shall identify the transcript(s) delivered; specify the dates of filing of the transcript with the trial court administrator and delivery to counsel; and shall indicate the

method of delivery. The certificate shall also contain the court reporter's address and telephone number.

Subd. 3. Overdue Transcripts. If any party deems the period of time set by the reporter to be excessive or insufficient, or if the reporter needs an extension of time for completion of the transcript, the party or reporter may request a different period of time within which the transcript must be delivered by written motion to the appellate court pursuant to Rule 127, showing good cause therefor. A justice, judge or a person designated by the appellate court shall act as a referee in hearing the motion and shall file with the appellate court appropriate findings and recommendations for a dispositional order. A failure to comply with the order of the appellate court fixing a time within which the transcript must be delivered may be punished as a contempt of court. The appellate court may declare a reporter ineligible to act as an official court reporter in any court proceeding and prohibit the reporter from performing any private reporting work until the overdue transcript is filed.

Subd. 4. Transcript Requirements. The transcript shall be typewritten or printed on 8 1/2 by 11 inch or 8 1/2 by 10 1/2 inch unglazed opaque paper with double spacing between each line of text, shall be bound at the left-hand margin, and shall contain a table of contents. To the extent possible, the transcript of a trial or other single court proceeding shall be consecutively paginated, regardless of the number of volumes. The name of each witness shall appear at the top of each page containing that person's testimony. A question and its answer may be contained in a single paragraph. The original and first copy of the transcript shall be filed with the trial court administrator and a copy shall be transmitted promptly to the attorney for each party to the appeal separately represented. All copies must be legible. The reporter shall certify the correctness of the transcript.

The transcript should include transcription of any testimony given by audiotape, videotape, or other electronic means unless that testimony has previously been transcribed, in which case the transcript shall include the existing transcript of testimony, with appropriate annotations and verification of what portions were replayed at trial, as part of the official trial transcript.

In any matter, the parties may stipulate to file with the clerk of the appellate courts, in addition to the typewritten or printed transcripts, all transcripts prepared for an appeal in electronic form. The electronic form shall be on three and one-half inch diskettes or compact discs formatted for IBM-compatible computers and shall contain the transcript in ASCII or other self-contained format accessible by Windows-compatible operating systems with no additional software. The label on the diskette or disc must include the case name and the case file number. One copy of the diskette or disc must be served on each party separately represented by counsel. The filing party must certify that the diskette or disc has been scanned for viruses and that it is virus-free.

(Amended effective March 1, 2001.)

Comment - 1983

The transcript must be ordered within 10 days after the notice of appeal is filed.

Since a prehearing conference will be held only if the court so directs, within 10 days after filing the notice of appeal the appellant must order the transcript or file a notice of intent to proceed on a statement of the proceedings pursuant to Rule 110.03 *or* Rule 110.04 *or notify the respondent that no transcript or statement will be ordered or prepared.*

Rule 110.02*, subdivision 2, introduces the certificate as to transcript, which includes a statement that financial arrangements satisfactory to the reporter and counsel have been made (see appendix for form).* Rule 110.02*, subdivision 3, provides sanctions in addition to contempt in the event of the reporter's failure to make timely delivery of the transcript. The certificate must be filed with the clerk of the appellate courts within 10 days after the date the transcript was ordered.*

The typewritten transcript requirement of Rule 110.02*, subdivision 4, is intended to authorize the use of legible computerized or mechanically produced transcripts.*

See Appendix for form of certificate as to transcript (Form 110).

Advisory Committee Comment - 1998 Amendments

Subdivision 2 is divided into two sections to emphasize that the court reporter has to file both a transcript certificate and a certificate of filing and delivery, each with different requirements. Court reporters sometimes do not include their telephone number on the certificates, which makes it difficult for the clerk's office to contact them if there is a problem with the certificate. The proposed amendment includes the reporter's telephone number as one of the pieces of information that must be included on the certificate.

Currently, the delivery certificates filed by most reporters only specify the date that the transcript was filed with the trial court administrator, together with a general statement that the transcript was "transmitted promptly" to counsel. The clerk's office uses the filing date as the delivery date for the purpose of calculating the briefing period, which may not be accurate if the reporter does not deliver the transcript on the same day filed. In addition, the certificates usually do not indicate the method of delivery. This makes a difference for calculation of the briefing period, because if the transcript is delivered by mail, three days are added to the briefing period. See MINN. R. CIV. APP. P. 125.03. The amended rule introduces the certificate of filing and delivery, which must specify the dates the transcript was filed with the court administrator and delivered to counsel. This certificate may show delivery by hand, by courier, or may show mailing. The court reporter and counsel should insure that the certificate accurately reflects the date and method of delivery of the transcript, because those factors determine the due date of appellant's brief. See MINN. R. CIV. APP. P. 125.03, 131.01.

Subdivision 4 includes a new requirement that the transcript be paginated consecutively, to the extent possible. This requirement is intended to reduce the number of transcripts requiring complicated citation forms. The goal is to have consecutive pagination of the entire trial, and any pretrial proceedings that immediately precede the trial as well as any other portions of the transcript that are ordered at the same time. If multiple court reporters were involved in transcribing the proceedings, various segments of the transcript can be assigned blocks of numbers so that pagination will be consecutive, albeit with potential for "missing" numbers. In that event, the transcript should clearly show that the missing numbers are intentionally omitted and identify the correct following transcript page number. There may be situations where it is impossible to paginate the transcript in this manner, and the rule recognizes such occasions may exist. The Committee believes that consecutive pagination should become the norm for transcripts, however, and this rule should make consecutive pagination the standard practice of court reporters.

The rule also includes the requirement that any testimony given by audio, video or other electronic means must be transcribed unless the court reporter provides an existing transcript of the videotape testimony, verifying its accuracy. The requirement for transcription applies only to testimony offered as such at trial, and not to non-testimonial evidence such as ordinary audio or video recordings, witness statements used for impeachment, or other recordings received as exhibits. If an existing transcript exists, it must be submitted with the electronic testimony and it is made part of the record on appeal. The reporter at trial certifies that what is included in the transcript is what transpired at the trial, but does not need to certify the accuracy or quality of the previously-prepared transcription. This rule change does not affect the procedure for criminal appeals, as they are governed by MINN. R. CRIM. P. 28.02, subd. 9.

See Appendix for form of certificate as to transcript and certificate of filing and delivery (Forms 110A and 110B).

Advisory Committee Comment - 2000 Amendments

Rule 110.02, subd. 4 is amended to allow parties to file transcripts in electronic form. With increasing frequency, transcripts of trials and other proceedings are available to counsel and the courts in electronic format, in addition to the traditional typed or printed format. Electronic format offers some significant advantages in the areas of handling, storage, and use. There is no currently accepted standard for preparation of electronic transcripts, which are available in a variety of formats and software contexts. This amendment allows parties the opportunity to file an electronic version of transcripts in addition to the paper transcripts required under the rules; it does not permit this format to replace the traditional paper transcript. As technology advances, additional forms of media may become acceptable.

110.03 Statement of the Proceedings When No Report Was Made or When the Transcript is Unavailable

If no report of all or any part of the proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the proceedings from the best

available means, including recollection. The statement is not intended to be a complete re-creation of testimony or arguments.

Appellant shall file the original proposed statement with the trial court administrator and the clerk of the appellate courts, and serve a copy on respondent, within 15 days after filing the notice of appeal. Within 15 days after service of appellant's statement, respondent may file with the trial court administrator and the clerk of the appellate courts objections or proposed amendments, and serve a copy on appellant.

The trial court may approve the statement submitted by appellant, or modify the statement based on respondent's submissions or the court's own recollection of the proceedings. The statement as approved by the trial court shall be included in the record. Within 60 days of the filing of the notice of appeal, the original trial court approval of the statement shall be filed with the trial court administrator and copies of the approval shall be served on counsel for the parties and filed with the clerk of the appellate court.

(Amended effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendments

The statement of the proceedings under Rule 110.03 may not be used if a transcript is available. The use of an agreed statement as the record under Rule 110.04 is restricted to situations where the parties agree on the essential facts and the portions of the record necessary for appellate review.

It was not clear under the former rule who was responsible for submitting the proposed statement and any objections to the trial court, or what the time period for the submission was. Under the amended rule, each party is responsible for filing their documents with the trial court administrator at the same time that the documents are served.

The amendment requires service of the proposed statement and objections on the clerk of the appellate courts, to allow the clerk's office to monitor whether the statement is being processed in a timely fashion. In addition, the amendment clarifies that the original approval is to be filed with the trial court administrator, with copies to counsel and the clerk of the appellate courts. Under the rule, the original statement and approval were filed with the clerk of the appellate courts. The amendment requires that the original be filed with the trial court administrator, because it is part of the record of the proceedings.

The amendment is also intended to clarify that the trial court is not bound by the parties' submissions but may modify the statement based on the court's recollection.

110.04 Agreed Statement as the Record

In lieu of the record as defined in Rule 110.01, the parties may prepare and sign a statement of the record showing how the issues presented by the appeal arose and were decided in the trial

court and setting forth only the facts averred and proved or sought to be proved which are essential to a decision of the issues presented. The agreed statement shall be approved by the trial court with any additions the trial court may consider necessary to present the issues raised by the appeal and shall be the record on appeal. The trial court's approval of the statement shall be filed with the clerk of the appellate courts within 60 days of the filing of the notice of appeal.

Comment - 1983

Within 10 days after filing the notice of appeal the appellant must file notice of intent to proceed under either Rule 110.03 *or* Rule 110.04. *The trial court's approval of the statement must be filed with the clerk of the appellate courts within 60 days after filing of the notice of appeal. The time for filing the appellant's brief and appendix begins to run with the filing of the trial court's approval. See* Rule 131.01.

110.05 Correction or Modification of the Record

If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and determined by the trial court and the record made to conform. If anything material to either party is omitted from the record by error or accident or is misstated in it, the parties by stipulation, or the trial court, either before or after the record is transmitted to the appellate court, or the appellate court, on motion by a party or on its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be approved and transmitted. All other questions as to the form and content of the record shall be presented to the appellate court.

Rule 111. Transmission of the Record

111.01 Transmission of Record; Time

Within 10 days after the due date for the filing of the appellant's brief, the trial court administrator shall transmit the record to the clerk of the appellate courts, together with a numbered itemized list in quadruplicate of all documents and exhibits contained in the record, identifying each with reasonable definiteness; each document and exhibit shall be endorsed with the appellate court docket number and corresponding number from the itemized list. The trial court administrator shall send a copy of this list to all parties. A party having possession of exhibits shall transmit them with an itemized list in quadruplicate to the clerk of the appellate courts within 10 days after the due date for the filing of the respondent's brief. A party shall make advance arrangements with the clerk for the delivery of bulky or weighty exhibits and for the cost of transporting them to and from the appellate courts. Transmission of the record is effected when the trial court administrator mails or otherwise forwards the record to the appellate courts.

(Amended effective for appeals taken on or after January 1, 1992.)

111.02 Exhibits and Models

The title of the case and the appellate court docket number shall be endorsed upon all exhibits sent to the clerk of the appellate courts. Exhibits and models will be returned to the trial court administrator with the remittitur when a new trial or further proceedings are ordered, but if the judgment of the appellate court is final and neither a new trial nor further proceedings are ordered, the clerk of the appellate courts may destroy all exhibits and models unless called for by the parties within 30 days after entry of the judgment of the appellate court.

(Amended effective for appeals taken on or after January 1, 1992.)

111.03 Record for Preliminary Hearing in the Appellate Courts

If prior to the time the record is transmitted, a party desires to make a motion for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the trial court administrator at the request of any party shall transmit to the appellate court those parts of the original record which the party designates.

(Amended effective for appeals taken on or after January 1, 1992.)

111.04 Disposition of Record after Appeal

Upon the termination of the appeal, the clerk of the appellate courts shall transmit the original transcript to the State Law Library and may transmit the remainder of the record to the trial court administrator.

(Amended effective for appeals taken on or after January 1, 1992.)

Rule 112. (Reserved for Future Use.)

Rule 113. (Reserved for Future Use.)

Rule 114. Court of Appeals Review of Administrative Rules

114.01 How Obtained

Review by the Court of Appeals of the validity of administrative rules pursuant to Minnesota Statutes, section 14.44 may be obtained by:

(a) filing a petition for declaratory judgment with the clerk of the appellate courts;
(b) paying the filing fee of $500 to the clerk of the appellate courts, unless no fee is required pursuant to Rule 103.01, subdivision 3;
(c) serving the petition upon the attorney general and the agency or body whose rule is to be reviewed;
(d) filing proof of service with the clerk of the appellate courts; and

(e) filing a cost bond or other security with the agency or body, unless no bond is required pursuant to Rule 107, subdivision 2, or the agency or board waives the bond.

(Adopted effective January 1, 1999.)

114.02 Contents of Petition for Declaratory Judgment

The petition shall briefly describe the specific rule to be reviewed and the errors claimed by petitioner. An original and one copy of the completed statement of the case pursuant to Rule 133.03 and a copy of the rule which is to be reviewed shall be attached to the petition. The title and form of the petition should conform to that shown in the appendix to these rules.

(Adopted effective January 1, 1999.)

114.03 Record on Review of Petition for Declaratory Judgment; Transmission of Record

Subdivision 1. Review of the Record. Review of the validity of administrative rules shall be on the record made in the agency rulemaking process. To the extent possible, the description of the record contained in Rule 110.01 and the provisions of Rules 110.02, 110.05, and 111 shall apply to declaratory judgment actions.

Subd. 2. Transmission of Record. Unless the time is extended by order of the court on a showing of good cause, the record shall be forwarded by the agency or body to the clerk of the appellate courts with an itemized list as described in Rule 111.01 within 30 days after service of the petition.

(Adopted effective January 1, 1999.)

114.04 Briefing

Petitioner's brief and appendix shall be served and filed in accordance with Rule 131.01 and briefing shall proceed in accordance with that rule.

(Adopted effective January 1, 1999.)

114.05 Participants

Persons, other than the petitioner, agency, and attorney general, may participate in the declaratory judgment action only with leave of the Court of Appeals. Permission may be sought by filing a motion with the Court of Appeals pursuant to Rule 127 or Rule 129 and serving that motion upon all other parties. The motion shall describe the nature of the movant's participation below, the interest which would be represented in the declaratory judgment action, and the manner in which the rule affects the rights or privileges of the moving party.

(Adopted effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendments

By statute the Court of Appeals is granted original jurisdiction to review by declaratory judgment the validity of administrative rules promulgated by a state agency. Minnesota Statutes, section 14.44 (1996). The statute contains no provisions regarding the procedure by which this review is to be accomplished. The Court of Appeals promulgated MINN. APP. SPEC. R. PRACT. 10, effective October 25, 1991, to provide a procedural framework for such proceedings, but the Special Rules of Practice are not routinely referred to by the practicing bar when trying to determine matters of appellate procedure. To remedy this problem, a new rule, Rule 114*, has been adopted.*

A declaratory judgment action in the Court of Appeals is the proper method to challenge a rule prior to its application or enforcement. The grounds for challenging a rule, which must be described in the petition required by Rule 114.02*, are prescribed by Minnesota Statutes, section 14.45 (1996). Only formally promulgated rules may be challenged in a pre-enforcement action under Minnesota Statutes, section 14.44. Minnesota Educ. Ass'n v. Minnesota State Bd. of Educ., 499 N.W.2d 846, 849 (Minn. App. 1993). This pre-enforcement challenge must be distinguished from a contested case action in which a rule is applied to a particular party and the validity of the rule, as illustrated by the application in the individual case, may be considered. See Mammenga v. State Dep't of Human Servs., 442 N.W. 2d 786 (Minn. 1989).*

TITLE III. DECISIONS REVIEWABLE BY CERTIORARI TO THE COURT OF APPEALS OR THE SUPREME COURT

Rule 115. Court of Appeals Review of Decisions of the Commissioner of Jobs and Training Economic Security and Other Decisions Reviewable by Certiorari and Review of Decisions Appealable Pursuant to the Administrative Procedure Act

115.01 How Obtained; Time for Securing Writ

Review by the Court of Appeals of decisions of the Commissioner of Economic Security and other decisions reviewable by certiorari and review of decisions appealable pursuant to the Administrative Procedure Act may be had by securing issuance of a writ of certiorari. The appeal period and the acts required to invoke appellate jurisdiction are governed by the applicable statute.

(Amended effective January 1, 1999.)

115.02 Petition for Writ; How Secured

The petition and a proposed writ of certiorari shall be presented to the clerk of the appellate courts. The writ issued shall be in the name of the court.

115.03 Contents of the Petition and Writ; Filing and Service

Subdivision 1. Contents and Form of Petition, Writ and Response. The petition shall definitely and briefly state the decision, judgment, order or proceeding which is sought to be reviewed and the errors which the petitioner claims. A copy of the decision and an original and one copy of a completed statement of the case pursuant to Rule 133.03 shall be attached to the petition. The title and form of the petition and writ should be as shown in the appendix to these rules. The respondent's statement of the case, if any, shall be filed and served within 10 days after service of the petitioner's statement.

Subd. 2. Bond or Security. (a) The petitioner shall file with the agency or body the cost bond pursuant to Rule 107, unless no bond is required under Rule 107, subd. 2, or by statute, or the bond is waived under Rule 107, subd. 1.

(b) The agency or body may stay enforcement of the decision in accordance with Rule 108. Application for a supersedeas bond or a stay on other terms must be made in the first instance to the agency or body. Upon motion, the Court of Appeals may review the agency's or body's decision on a stay and the terms of any stay.

Subd. 3. Filing; Fees. The clerk of the appellate courts shall file the original petition and issue the original writ. The petitioner shall pay $500 to the clerk of the appellate courts, unless no fee is required under Rule 103.01, subdivision 3, or by statute.

Subd. 4. Service. The petitioner shall serve copies of the petition and the writ, if issued, upon the agency or body to which it is directed and upon every party. Proof of service shall be filed with the clerk of the appellate courts within five days of service. A copy of the petition and writ shall be provided to the Attorney General, unless the state is neither a party nor the body to which the writ is directed.

(Amended effective January 1, 1999.)

115.04 The Record on Review by Certiorari; Transmission of the Record

Subdivision 1. General Application of Rules 110 and 111. To the extent possible, the provisions of Rules 110 and 111 respecting the record and the time and manner of its transmission and filing or return in appeals shall govern upon the issuance of the writ and the parties shall proceed as though the appeal had been commenced by the filing of a notice of appeal, unless otherwise provided by this rule, the court or by statute. Each reference in Rules 110 and 111 to the trial court, the trial court administrator, and the notice of appeal shall be read, where appropriate, as a reference to the body whose decision is to be reviewed, to the administrator, clerk or secretary thereof, and to the writ of certiorari respectively.

Subd. 2. Transcript of Audiotaped Proceedings. If a proceeding has been audiotaped and a record of the proceeding is necessary for the appeal, the relator shall order the transcript from the agency or body within ten days after the writ of certiorari is filed. The relator shall make

appropriate financial arrangements with the agency or body for the transcription. The agency or body shall designate a court reporter or other qualified person to transcribe the audiotape. The agency or body shall serve and file a transcript certificate pursuant to Rule 110.02, subdivision 2(a) within ten days after the transcript is ordered. The reporter shall file the original and first copy of the transcript with the agency or body, deliver a copy to the attorney for each party to the appeal separately represented, and file a certificate of filing and delivery pursuant to Rule 110.02, subdivision 2(b).

Subd. 3. Transmission of Record. Within ten days after the due date for the filing of relator's brief, the agency or body shall transmit the entire record of the proceeding under review to the clerk of the appellate courts, pursuant to Rule 111.01.

(Amended effective January 1, 1999.)

Comment – 1983

See comment following Rule 115.06.

Advisory Committee Comment - 1998 Amendments

The amendments to this rule in 1998 update references to the Department of Economic Security, clarify that the time for appeal and jurisdictional acts are defined by statute, clarify the terms used to refer to the parties, and establish procedures for transcribing audiotapes of agency proceedings.

Because certiorari in Minnesota is a statutory remedy, the jurisdictional prerequisites for certiorari review are governed by the applicable statute, not by the appellate rules. Statutes governing various types of decisions reviewable by certiorari may establish different time limitations and contain different requirements for securing review by the Court of Appeals. Examples of different statutory requirements include: proceedings governed by the Administrative Procedure Act, Minnesota Statutes, sections 14.63 and 14.64 (1996) (service and filing of petition for writ of certiorari not more than 30 days after party receives final decision and order of agency; timely motion for reconsideration extends time until service of order disposing of motion); reemployment benefits proceedings, Minnesota Statutes, section 268.106, subd. 7 (1996) (service and filing of petition for writ of certiorari within 30 days of mailing of Commissioner of Economic Security's decision); and proceedings under the general certiorari statute, Minnesota Statutes, sections 606.01 and 606.02 (1996) (issuance of writ and service of issued writ within 60 days after party applying for writ receives due notice of proceedings to be reviewed).

The Rule has been modified to make clear that the applicable statutes will determine the time limitations and triggering events for review. The rule has been modified to clarify the procedure for obtaining a stay of the order for which review is sought. As with other appellate proceedings, requests for stays should be addressed in the first instance to the agency or body which has issued the challenged decision.

A party seeking certiorari review is a petitioner unless and until the court issues a writ of certiorari. After a writ has been issued, the party seeking review is called the relator. The adverse party or parties and the agency or body whose decision is to reviewed are the respondents.

Finally, the revisions clarify and make more specific the procedures for preparation and submission of the record for appellate review.

115.05 Costs and Disbursements

Costs and disbursements may be taxed by the prevailing party but not for or against the body to whom the writ is directed. If a writ appears to have been brought for the purpose of delay or vexation, the Court of Appeals may award double costs to the prevailing party.

Comment – 1983

See comment following Rule 115.06.

115.06 Dismissal Costs

If any writ of certiorari is issued improperly or is not served as required by these rules, the party against whom it is issued may have it discharged on motion and affidavit showing the facts and shall be entitled to allowable costs.

Comment - 1983

Rule 115 sets out the procedure for securing review by the Court of Appeals of decisions of the Commissioner of Jobs and Training, decisions appealable pursuant to the Administrative Procedure Act, and other decisions reviewable by certiorari to the Court of Appeals. The procedures are similar to those provided by former Rule 115 except that the time limitations set out in the rule have been shortened to conform with the time limitations presently provided in the statute governing review of unemployment compensation decisions. The rule cautions that statutes governing review of the various types of decisions reviewable by certiorari may establish different time limitations.

Proof of service of the petition and the writ must be filed with the clerk of the appellate courts within 5 days after service. A copy of the petition and the writ must be provided to the attorney general whenever the state or a department or agency of the state is a party or the body to whom the writ is directed.

A completed statement of the case shall be attached to the petition (Form 133).

See appendix for form of the petition for a writ of certiorari (Form 115A) and of the writ of certiorari (Form 115B).

NOTE: For procedure to be followed for the filing of a petition for declaratory judgment to determine the validity of an administrative rule pursuant to Minnesota Statutes, section 14.44, see Rule 10 of the Special Rules of Practice for the Minnesota Court of Appeals.

Rule 116. Supreme Court Review of Decisions of the Workers' Compensation Court of Appeals, Decisions of the Tax Court, and of Other Decisions Reviewable by Certiorari

116.01 How Obtained; Time for Securing Writ

Supreme Court review of decisions of the Workers' Compensation Court of Appeals, decisions of the Tax Court, and of other decisions reviewable by certiorari may be had by securing issuance of a writ of certiorari within 30 days after the date the party applying for the writ was served with written notice of the decision sought to be reviewed, unless an applicable statute prescribes a different period of time.

Comment – 1983

See comment following Rule 116.06.

116.02 Petition for Writ; How Secured

The petition and a proposed writ of certiorari shall be presented to the clerk of the appellate courts. The writ issued shall be in the name of the court.

Comment – 1983

See comment following Rule 116.06.

116.03 Contents of the Petition and Writ; Filing and Service

Subdivision 1. Contents and Form of Petition, Writ and Response. The petition shall definitely and briefly state the decision, judgment, order or proceeding which is sought to be reviewed and the errors which the petitioner claims. A copy of the decision and two copies of a completed statement of the case pursuant to Rule 133.03 shall be attached to the petition. The title and form of the petition and writ should be as shown in the appendix to these rules. The respondent's statement of the case, if any, shall be filed and served within 10 days after receiving the petitioner's statement.

Subd. 2. Bond or Security. The petitioner shall file the bond or other security required by statute or by the Supreme Court.

Subd. 3. Filing; Fees. The clerk of the appellate courts shall file the original petition and issue the original writ. The petitioner shall pay $500 to the clerk of the appellate courts, unless a different filing fee is required by statute.

Subd. 4. Service; Time. The petitioner shall serve copies of the petition and writ upon the court or body to whom it is directed and upon any party within 30 days after the petitioner was served with written notice of the decision to be reviewed, unless an applicable statute prescribes a different period of time. Proof of service shall be filed with the clerk of the appellate courts within 5 days of service. A copy of the petition and writ shall be provided to the Attorney General at the time of service.

(Amended effective July 1, 1993.)

Comment – 1983

See comment following Rule 116.06.

116.04 The Record on Review by Certiorari; Transmission of the Record

To the extent possible, the provisions of Rules 110 and 111 respecting the record and the time and manner of its transmission and filing or return in appeals shall govern upon the issuance of the writ, and the parties shall proceed as though the appeal had been commenced by the filing of a notice of appeal, unless otherwise provided by the court or by statute. Each reference in those rules to the trial court, the trial court administrator, and the notice of appeal shall be read, where appropriate, as a reference to the body whose decision is to be reviewed, to the administrator, clerk or secretary thereof, and to the writ of certiorari respectively.

(Amended effective for appeals taken on or after January 1, 1992.)

Comment – 1983

See comment following Rule 116.06.

116.05 Costs and Disbursements

Costs and disbursements may be taxed by the prevailing party but not for or against the body to whom the writ is directed. If a writ appears to have been brought for the purpose of delay or vexation, the Supreme Court may award double costs to the prevailing party.

Comment – 1983

See comment following Rule 116.06

116.06 Dismissal Costs

If any writ of certiorari is issued improperly or is not served as required by these rules, the party against whom it is issued may have it discharged on motion and affidavit showing the facts and shall be entitled to allowable costs.

Comment - 1983

Rule 116 sets out the procedures for securing review by the Supreme Court of decisions of the Workers' Compensation Court of Appeals, decisions of the Tax Court, and other decisions reviewable by certiorari to the Supreme Court. The procedures are similar to those provided by former Rule 115 except that the time limitations set out in the rule have been shortened to conform with the time limitations presently provided in the statute governing review of workers' compensation decisions. The rule cautions that statutes governing review of the various types of decisions reviewable by certiorari may establish different time limitations.

Proof of service of the petition and writ must be filed with the clerk of the appellate courts within 5 days after service. A copy of the petition and the writ must also be provided to the attorney general.

See Appendix for form of the petition for a writ of certiorari (Form 116A) and of the writ of certiorari (Form 116B).

Rule 117. Petition in Supreme Court for Review of Decisions of the Court of Appeals

Subdivision 1. Filing of Petition. Any party seeking review of a decision of the Court of Appeals shall separately petition the Supreme Court. The petition with proof of service shall be filed with the clerk of the appellate courts within 30 days of the filing of the Court of Appeals' decision. A filing fee of $500 shall be paid to the clerk of the appellate courts.

Subd. 2. Discretionary Review. Review of any decision of the Court of Appeals is discretionary with the Supreme Court. The following criteria may be considered:

(a) the question presented is an important one upon which the Supreme Court should rule; or
(b) the Court of Appeals has ruled on the constitutionality of a statute; or
(c) the lower courts have so far departed from the accepted and usual course of justice as to call for an exercise of the Supreme Court's supervisory powers; or
(d) a decision by the Supreme Court will help develop, clarify, or harmonize the law; and

(1) the case calls for the application of a new principle or policy; or
(2) the resolution of the question presented has possible statewide impact; or
(3) the question is likely to recur unless resolved by the Supreme Court.

Subd. 3. Petition Requirements. The petition for review shall not exceed five typewritten pages, exclusive of appendix, and shall contain:

(a) a statement of the legal issues sought to be reviewed, and the disposition of those issues by the Court of Appeals;
(b) a statement of the criteria relied upon to support the petition, or other substantial and compelling reasons for review;

(c) a statement of the case, including disposition in the trial court or administrative agency and the Court of Appeals, and of those facts not addressed by the Court of Appeals relevant to the issues presented for review, with appropriate references to the record; and

(d) a brief argument in support of the petition.

The appendix shall contain the decision and opinion of the Court of Appeals, the judgments, orders, findings of fact, conclusions of law, and memorandum decisions of the trial court or administrative agency, pertinent trial briefs, and any portion of the record necessary for an understanding of the petition.

Four copies of the petition and appendix shall be filed with the clerk of the appellate courts.

Subd. 4. Response and Request for Cross-Review. An opposing party may file with the clerk of the appellate courts a response to the petition within 20 days of service. The response shall comply with the requirements set forth for the petition and shall contain proof of service. Any responding party may, in its response, also conditionally seek review of additional designated issues not raised by the petition. In the event of such conditional request, the party filing the initial petition for review shall not be entitled to file a response unless the court requests one on its own initiative.

Subd. 5. Amicus Curiae. A request for leave to participate in the appeal as amicus curiae is governed by Rule 129.

(Amended effective December 1, 2003.)

Comment - 1983

This entirely new rule establishes the procedure for obtaining Supreme Court review of a decision of the Court of Appeals. Review is discretionary with the Supreme Court. While the rule enumerates criteria which may be considered by the court in exercising its discretion, they are intended to the instructive and are neither mandatory nor exclusive. The petition should be accompanied by any documents pertinent to the Supreme Court's review.

See Appendix for form of petition for review (Form 117).

Advisory Committee Comment - 1998 Amendments

The 1998 revisions to Rule 117 eliminate the provision for "conditional" petitions for review. In its stead, the revised rule allows parties to include in their responses a conditional request to the court to review additional issues only if the petition is granted. This procedure mirrors the procedure used in criminal appeals. See MINN. R. CRIM. P. 29.04, subd. 6 (appeals to Court of Appeals). The revised rule does not provide for any expansion of the five-page limit for the response in order to accommodate the conditional request for review of additional issues. By the same token, the amended rule does not allow a reply by the party initially seeking review, since

that party has already indicated to the court that the case satisfies some of the criteria of Rule 117.

A party who wishes to have issues reviewed by the Supreme Court regardless of the court's actions on a previously filed petition should file a petition within the 30-day time limit from decision, since the court is unlikely to deny an initial petition but grant review of issues raised only conditionally in a response. Likewise, a party who would feel constrained by the page limit of a response which includes a conditional request for review of additional issues should file a separate petition for review within the time provided by Rule 117 for an initial petition, 30 days from the date of filing the Court of Appeals' decision.

Rule 118. Accelerated Review by the Supreme Court Prior to a Decision by the Court of Appeals

Subdivision 1. Filing Requirements. Any party may petition the Supreme Court for accelerated review of any case pending in the Court of Appeals upon a petition which shows, in addition to the criteria of Rule 117, subdivision 2, that the case is of such imperative public importance as to justify deviation from the normal appellate procedure and to require immediate determination in the Supreme Court. The petition for accelerated review with proof of service shall be filed with the clerk of the appellate courts together with a filling fee of $100. The filing of a petition for accelerated review shall not stay proceedings or extend the time requirements in the Court of Appeals.

Subd. 2. Petition Requirements. The petition for accelerated review shall not exceed ten typewritten pages, exclusive of appendix, and shall contain:

(a) a statement of the issues;
(b) a statement of the case, including all relevant facts, and disposition in the trial court or administrative agency; and
(c) a brief argument in support of the petition.

The appendix shall contain the judgments, orders, findings of fact, conclusions of law, and memorandum decisions of the trial court or administrative agency, pertinent trial briefs, and any portion of the record necessary for an understanding of the petition.

Four copies of the petition and appendix shall be filed with the clerk.

Subd. 3. Notice. If the Supreme Court orders accelerated review, whether on the petition of a party, on certification by the Court of Appeals pursuant to Minnesota Statutes, Section 480A.10, or on its own motion, notice of accelerated review shall be given by the clerk of the appellate courts to all parties.

(Amended effective July 1, 1989.)

Comment - 1983

This rule authorizes a party to request by-pass of the Court of Appeals in favor of immediate review by the Supreme Court. The decision to permit accelerated review is discretionary with the Supreme Court, and the rule contemplates that leave will be granted only in extraordinary cases.

There is statutory authority for certification of a case by the Court of Appeals and for transfer of a case by order of the Supreme Court.

See Appendix for form of petition for accelerated review (Form 118).

Rule 119. (Reserved for Future Use.)

TITLE V. EXTRAORDINARY WRITS

Rule 120. Writs of Mandamus and Prohibition Directed to a Judge or Judges and Other Writs

120.01 Petition for Writ

Application for a writ of mandamus or of prohibition or for any other extraordinary writ in the Supreme Court directed to the Court of Appeals, the Tax Court, or the Workers' Compensation Court of Appeals, or in the Court of Appeals directed to a trial court shall be made by petition. The petition shall specify the lower court decision and the name of the judge and shall contain:

(a) a statement of the facts necessary to an understanding of the issues presented by the application;
(b) a statement of the issues presented and the relief sought; and
(c) a statement of the reasons why the extraordinary writ should issue.

Petitioner shall attach a copy of the trial court decision challenged in the petition, and if necessary to an understanding of the issues, additional pertinent lower court documents.

The petition shall be titled "In re (name of petitioner), Petitioner," followed by the trial court caption, and shall be captioned in the court in which the application is made, in the manner specified in Rule 120.04.

(Amended effective March 1, 2001.)

Comment – 1983

See comment following Rule 121.03.

Advisory Committee Comment – 1998

See comment following Rule 120.04.

120.02 Submission of Petition; Response to the Petition

The petition shall be served on all parties and filed with the clerk of the appellate courts. If the lower court is a party, it shall be served; in all other cases, it should be notified of the filing of the petition and provided with a copy of the petition and any response. All parties other than the petitioner shall be deemed respondents and may answer jointly or separately within five days after the service of the petition. If a respondent does not desire to respond, the clerk of the appellate courts and all parties shall be advised by letter within the five-day period, but the petition shall not thereby be taken as admitted.

(Amended effective January 1, 1999.)

Comment – 1983

See comment following Rule 121.03.

Advisory Committee Comment - 1998

See comment following Rule 120.04.

120.03 Procedure Following Submission

If the reviewing court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it may:

(a) issue a peremptory writ, or
(b) grant temporary relief and direct the filing of briefs.

There shall be no oral argument unless the reviewing court otherwise directs.

Comment – 1983

See comment following Rule 121.03.

120.04 Filing; Form of Papers; Number of Copies

Upon receipt of a $500 filing fee, the clerk of the appellate courts shall file the petition. All papers and briefs may be typewritten and in the form specified in Rule 132.02. Four copies with proof of service shall be filed with the clerk of the appellate courts, but the reviewing court may direct that additional copies be provided. Service of all papers and briefs may be made by mail.

(Amended effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendments

The primary purpose of these amendments is to modify extraordinary writ procedure to allow a party to seek relief without requiring that party to sue the trial court. This change follows in some respects the amendments made to the federal rules of appellate procedure in 1997. The rule, however, retains most of the remaining procedural requirements of the existing rule inasmuch as they work well in practice in Minnesota.

The rule eliminates any requirement that the trial court judge be named as a party. It is still possible to name the judge as a respondent in the writ proceeding, but this rule does not require it. This change is intended to make it less likely that the seeking of the writ will interfere with the orderly handling of ongoing proceedings in the trial court. The rule also eliminates the requirement that a proposed writ be filed because that document is of little use to the courts.

The forms relating to this rule are also amended as part of these changes.

120.05 Review in Supreme Court

Denial of a writ under this rule or Rule 121 by the Court of Appeals is subject to review by the Supreme Court through petition for review under Rule 117. Review of an order denying an extraordinary writ should not be sought by filing a petition for a writ under this rule with the Supreme Court unless the criteria for issuance of the writ are applicable to the Court of Appeals order for which review is sought.

(Adopted effective March 1, 2001.)

Advisory Committee Comment - 2000 Amendments

Rule 120 is amended to make explicit two aspects of extraordinary writ practice that some practitioners have overlooked. First, an extraordinary writ directed to the Tax Court or the Workers' Compensation Court of Appeals may be sought in the Supreme Court. See MINN. STAT. § 480.04 (1998). Second, the normal method of seeking review in the Supreme Court of a denial of an extraordinary writ by the Court of Appeals is by petition for review under Rule 117, not by petition for a writ under this rule. The same is true for review of denial of an emergency writ under Rule 121.

Rule 121. Mandamus and Prohibition - Emergency Situations

121.01 Communication to the Court

If an emergency situation exists and the provisions of Rule 120 are impractical, the attorney for a party seeking a writ of mandamus or of prohibition directed to a lower court may orally petition the reviewing court for such relief by telephoning or by personally contacting the Supreme Court Commissioner, if application is made in the Supreme Court, or the Chief Staff Attorney, if application is made in the Court of Appeals, who will communicate with the reviewing court relative to an early or immediate consideration of the petition. If the Commissioner or Chief Staff Attorney is unavailable, the oral petition may be made to a justice or judge of the reviewing court.

Comment - 1983

See comment following Rule 121.03.

121.02 Procedure

Except as provided in Rule 121.03, no written petition or other document need be filed unless the reviewing court so directs. If the reviewing court is of the opinion that either no emergency exists or no relief is available, it may either deny the oral petition or may direct the party to proceed under Rule 120. Otherwise, after affording all parties an opportunity to be heard, it may:

(a) issue a peremptory writ, or
(b) grant such other relief as the interest of justice requires.

(Amended effective for appeals taken on or after January 1, 1992.)

Comment - 1983

See comment following Rule 121.03

121.03 Filing Fee

In the event the oral petition is granted, the attorney orally petitioning for a writ shall thereafter immediately transmit to the clerk of the appellate courts a $500 filing fee with a letter specifying:

(a) the name of the case,
(b) the lower court and the name of the judge,
(c) the type of writ sought, and
(d) the name, address, telephone number and attorney registration license number of each attorney.

No filing fee or transmission of documents shall be required in the event the oral petition is denied.

(Amended effective July 1, 1993.)

Comment to Rules 120 and 121 - 1983

These two rules have been amended to reflect the judicial restructuring accomplished by the creation of the Court of Appeals. Jurisdiction to issue extraordinary writs directed to trial courts or other lower tribunals, previously existing in the Supreme Court, is vested by these rules in the Court of Appeals. Once the Court of Appeals has acted on an application for an extraordinary writ, review by the Supreme Court is discretionary under Rule 117. Extraordinary relief in the Supreme Court pursuant to these rules relates solely to actions taken by the Court of Appeals in matters other than those arising under Rules 120 and 121.

The basic procedures and requirements remain the same in both courts as they were under the prior rules with the exception that the filing fee has been increased. The filing of a petition for extraordinary relief does not automatically stay the proceedings in the lower court.

See Appendix for form of petition for a writ of prohibition (Form 120A), the order for the writ (Form 120B)*, and the writ of prohibition (Form 120C).**

* Forms 120A, 120B, and 120C deleted effective January 1, 1999.

Rule 122. (Reserved for Future Use.)

Rule 123. (Reserved for Future Use.)

Rule 124. (Reserved for Future Use.)

TITLE VII. GENERAL PROVISIONS

Rule 125. Filing and Service

125.01 Filing

Papers required or authorized by these rules shall be filed with the clerk of the appellate courts within the time limitations contained in the applicable rule. Filing may be accomplished by mail addressed to the clerk of the appellate courts, but filing shall not be timely unless the papers are deposited in the mail within the time fixed for filing. If a motion or petition requests relief which may be granted by a single judge, the judge may accept the document for filing, in which event the date of filing shall be noted on it and it shall be thereafter transmitted to the clerk. All papers filed shall include the attorney registration license number of counsel filing the

paper and, if filed subsequent to the notice of appeal, shall specify the appellate court docket number.

(Amended effective for appeals taken on or after January 1, 1992.)

125.02 Service and Filing of All Papers Required

Copies of all papers filed by any party shall be served by that party, at or before the time of filing, on all other parties to the appeal or review. Papers shall be filed with the clerk of the appellate courts at the time of service or immediately thereafter. Service on a party represented by counsel shall be made on the attorney.

125.03 Manner of Service

Service may be personal or by mail. Personal service includes delivery of a copy of the document to the attorney or other responsible person in the office of the attorney, or to the party, if not represented by counsel, in any manner provided by Rule 4, Minnesota Rules of Civil Procedure. Service by mail is complete on mailing; however, whenever a party is required or permitted to do an act within a prescribed period after service and the paper is served by mail, 3 days shall be added to the prescribed period.

(Amended effective for appeals taken on or after January 1, 1992.)

125.04 Proof of Service

Papers presented for filing shall contain either a written admission of service or an affidavit of service. Proof of service may appear on or be affixed to the papers filed. The clerk of the appellate courts may permit papers to be filed without proof of service, but shall require proof of service to be filed promptly after filing the papers.

Comment - 1983

The filing of all papers must be made within the time designated in the applicable rule.

Filing by mail addressed to the clerk of the appellate courts is authorized but must be accomplished by deposit in the mail, first class postage prepaid, within the designated time period. To the extent practical, all papers shall include the appellate court docket number and attorney registration license numbers.

The clerk of the appellate courts is not authorized to file any papers unless and until the appropriate fee has been paid (Minnesota Statutes, section 357.08 (1983)) or the documents are accompanied by a written statement of the reason no fee is required.

Proof of service must be filed with the clerk of the appellate courts at the time the notice, petition or motion is filed or immediately thereafter.

Rule 126. Computation and Extension or Limitation of Time

126.01 Computation

In computing any period of time prescribed or allowed by these rules, by order of court or by any applicable statute, the method of computation specified in Rules 6.01 and 6.05, Minnesota Rules of Civil Procedure, shall be used.

126.02 Extension or Limitation of Time

The appellate court for good cause shown may by order extend or limit the time prescribed by these rules or by its order for doing any act, and may permit an act to be done after the expiration of that time if the failure to act was excusable under the circumstances. The appellate court may not extend or limit the time for filing the notice of appeal or the time prescribed by law for securing review of a decision or an order of a court or an administrative agency, board, commission or officer, except as specifically authorized by law.

Comment - 1983

This rule specifically incorporates the method of computation specified in Rules 6.01 and 6.03, Minnesota Rules of Civil Procedure.

Rule 126.02 requires the showing of good cause for an extension or limitation of time prescribed by the rules. To obtain relief from a failure to act within the time prescribed, it is necessary to establish that the failure was excusable under the circumstances. The appellate court may not extend or limit the time for filing the notice of appeal or for petitioning for review.

Rule 127. Motions

Unless another form is prescribed by these rules, an application for an order or other relief shall be made by serving and filing a written motion for the order or relief. The filing of a motion shall not stay any time period or action specified in these rules unless ordered by the appellate court. The motion shall state with particularity the grounds and set forth the order or relief sought. If the motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response within 5 days after service of the motion. Any reply shall be served within 2 days, at which time the motion shall be deemed submitted. The motion and all relative papers may be typewritten. Four copies of all papers shall be filed with proof of service. Oral argument will not be permitted except by order of the appellate court.

(Amended effective for appeals taken on or after January 1, 1992.)

Rule 128. Briefs

128.01 Informal Briefs and Letter Briefs

Subdivision 1. Informal Briefs. Informal briefs may be authorized by the appellate court and shall contain a concise statement of the party's arguments on appeal, together with the appendix required by Rule 130.01. The informal brief shall have a cover and may be bound informally by stapling.

Subd. 2. Reliance Upon Trial Court Memoranda. If counsel elects, in the statement of the case, to rely upon memoranda submitted to the trial court supplemented by a short letter argument, the submission shall be covered and may be informally bound by stapling. The trial court submissions and decision shall be attached as the appendix.

(Amended effective January 1, 1999.)

128.02 Formal Brief

Subdivision 1. Brief of Appellant. The formal brief of the appellant shall contain under appropriate headings and in the order here indicated:

(a) A table of contents, with page references, and an alphabetical table of cases, statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(b) A concise statement of the legal issue or issues involved, omitting unnecessary detail. Each issue shall be stated as an appellate court would state the broad issue presented. Each issue shall be followed by a concise statement of the trial court's ruling and a list of the most apposite cases, not to exceed four, and the most apposite constitutional and statutory provisions.

(c) A statement of the case and the facts. A statement of the case shall first be presented identifying the trial court and the trial judge and indicating briefly the nature of the case and its disposition. There shall follow a statement of facts relevant to the grounds urged for reversal, modification or other relief. The facts must be stated fairly, with complete candor, and as concisely as possible. Where it is claimed that a verdict, finding of fact or other determination is not sustained by the evidence, the evidence, if any, tending directly or by reasonable inference to sustain the verdict, findings or determination shall be summarized. Each statement of a material fact shall be accompanied by a reference to the record, as provided in Rule 128.03.

(d) An argument. The argument may be preceded by a summary introduction and shall include the contentions of the party with respect to the issues presented, the analyses, and the citations to the authorities. Each issue shall be separately presented. Needless repetition shall be avoided.

(e) A short conclusion stating the precise relief sought.

(f) The appendix required by Rule 130.01.

Subd. 2. Brief of Respondent. The formal brief of the respondent shall conform to the requirements of Rule 128.02, subdivision 1, except that a statement of the issues or of the case or facts need not be made unless the respondent is dissatisfied with the statement of the appellant.

If a notice of review is filed pursuant to Rule 106, the respondent's brief shall present the issues specified in the notice of review. A respondent who fails to file a brief either when originally due or upon expiration of an extension of time shall not be entitled to oral argument without leave of the appellate court.

Subd. 3. Reply Brief. The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to new matter raised in the brief of the respondent.

Subd. 4. Additional Briefs. No further briefs may be filed except with leave of the appellate court.

(Amended effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendments

Rule 128.02 is amended in 1998 to add a requirement for listing the most apposite cases for each issue in the statement of issues. This rule is part of the briefing requirements for the United States Court of Appeals for the Eighth Circuit, and provides useful guidance on the issues. See 8th Cir. R. 28A(I)(4). MINN. R. CIV. APP. P. 128.02, subd. 2, does not expressly require a statement of issues in a responding brief, but if one is included, it should conform to this rule. In addition, the provisions concerning letter briefs formerly found in Rule 132.01, subd. 5, have been moved to Rule 128.01, subd. 2.

128.03 References in Briefs to Record

Whenever a reference is made in the briefs to any part of the record which is reproduced in the appendix or in a supplemental record, the reference shall be made to the specific pages of the appendix or the supplemental record where the particular part of the record is reproduced. Whenever a reference is made to a part of the record which is not reproduced in the appendix or in a supplemental record, the reference shall be made to the particular part of the record, suitably designated, and to the specific pages of it, e.g., Motion for Summary Judgment, p. 1; Transcript, p. 135; Plaintiff's Exhibit D, p. 3. Intelligible abbreviations may be used.

128.04 Reproduction of Statutes, Ordinances, Rules, Regulations, Etc.

If determination of the issues presented requires the study of statutes, ordinances, rules, regulations, etc., or relevant parts of them, they shall be reproduced in the brief or in an addendum, or they may be supplied to the court in pamphlet form.

Comment - 1983

See Appendix for form of formal brief (Form 128).

128.05. Citation of Supplemental Authorities

If pertinent and significant authorities come to a party's attention after the party's brief has been filed or after oral argument but before decision, a party may promptly advise the clerk of the appellate courts by letter, with a copy to all other parties, setting forth the citations. The letter must state without argument the reasons for the supplemental citations, referring either to the page of the brief or to the point argued orally. Any response must be made promptly and must be similarly limited.

(Adopted effective March 1, 2001.)

Advisory Committee Comment - 2000 Amendments

Rule 128.05 is a new provision in the Minnesota Rules. It is patterned after FED. R. APP. P. 28(j), and is intended to allow a party to submit additional authorities to the court without requiring a motion and without providing an opportunity for argument. The rule contemplates a very short submission, simply providing the citation of the new authority and enough information so the court can determine what previously-made argument it relates to. The submission itself is not to contain argument, and a response, if any, is similarly constrained. Because a response is limited to the citation of authority and cannot provide argument, a response most frequently will not be necessary or proper. A submission or reply that does not conform to the rule is subject to being stricken. See, e.g., Esicorp, Inc. v. Liberty Mut. Ins. Co., 193 F.3d 966, 972 (8th Cir. 1999) (granting motion to strike argumentative submission); Anderson v. General Motors Corp., 176 F.3d 488 (10th Cir. 1999) (unpublished) (same).

Rule 129. Brief of an Amicus Curiae

129.01 Request for Leave to Participate

Upon prior notice to the parties, a brief of an amicus curiae may be filed with leave of the appellate court. The applicant shall serve and file a request for leave no later than 15 days after the filing of the notice of appeal, the petition which initiates the appeal, the appellate petition for declaratory judgment, or the appellate court order granting review. A request for leave shall identify whether the applicant's interest is public or private in nature, identify the party supported or indicate whether the amicus brief will suggest affirmance or reversal, and shall state the reason why a brief of an amicus curiae is desirable.

(Amended effective March 1, 2001.)

129.02 Time for Filing and Service

Copies of an amicus curiae brief shall be served on all parties and filed with the clerk of the appellate courts with proof of service no later than seven days after the time allowed for filing the brief of the party supported, or if in support of neither party, no later than the time allowed for filing the petitioner's or appellant's brief.

(Amended effective March 1, 2001.)

129.03 Certification in Brief

A brief filed under this rule shall indicate whether counsel for a party authored the brief in whole or in part and shall identify every person or entity, other than the amicus curiae, its members, or its counsel, who made a monetary contribution to the preparation or submission of the brief. The disclosure shall be made in the first footnote on the first page of text.

(Adopted effective March 1, 2001.)

129.04 Oral Argument

An amicus curiae shall not participate in oral argument except with leave of the appellate court.

(Amended effective March 1, 2001.)

Advisory Committee Comment - 2000 Amendments

Rule 129.01 is amended to delete a provision that provided for an automatic stay of a briefing period until a request for leave to participate as amicus curiae was decided. Under the revised rule, the parties proceed with the normal briefing schedule without regard to whether amici will participate. A party or a potential amicus curiae who believes a delay in the briefing schedule is necessary may move for a stay. Rule 129.03 is a new provision requiring disclosure, in the brief, of whether any counsel for a party authored the brief in whole or in part and shall identify persons other than the amicus curiae who provided monetary contribution to its preparation or submission. This rule is patterned on Rule 37.6 of the Rules of the Supreme Court of the United States. This rule is intended to encourage participation of independent amici, and to prevent the courts from being misled about the independence of amici or being exposed to "a mirage of amicus support that really emanates from the petitioner's word processor." Stephen M. Shapiro, Certiorari Practice: The Supreme Court's Shrinking Docket, reprinted at 24 LITIGATION, Spring 1998, at 25, 74. The rule is not intended to discourage the normal cooperation between the parties to an action and the amici, including the providing of access to the record, the exchange of briefs in advance of submission, and other such activities that do not result in someone other than the amicus preparing the amicus brief.

The numbering of the rule is changed to conform it to the style predominantly used in the other rules. This change is not intended to modify the meaning or interpretation of the rule.

Rule 130. The Appendix to the Briefs; Supplemental Record

130.01 Record Not to be Printed; Appellant to File Appendix

Subdivision 1. Record; Portions. The record shall not be printed. The appellant shall prepare and file an appendix to its brief. The appendix shall be separately and consecutively numbered and shall contain the following portions of the record:

(a) the relevant pleadings;
(b) the relevant written motions and orders;
(c) the verdict or the findings of fact, conclusions of law and order for judgment;
(d) the relevant post trial motions and orders;
(e) any memorandum opinions;
(f) if the trial court's instructions are challenged on appeal, the instructions, any portion of the transcript containing a discussion of the instructions and any relevant requests for instructions;
(g) any judgments;
(h) the notice of appeal;
(i) if the constitutionality of a statute is challenged, proof of compliance with Rule 144; and
(j) the index to the documents contained in the appendix.

The parties shall have regard for the fact that the entire record is always available to the appellate court for reference or examination and shall not engage in unnecessary reproduction.

Subd. 2. Statement. If the record includes a statement of the proceedings made pursuant to Rule 110.03 or an agreed statement made pursuant to Rule 110.04, the statement shall be included in the appendix.

(Amended effective January 1, 1999, with correction by court dated November 9, 1998.)

Comment - 1983

This rule no longer requires the inclusion of the trial court's instructions in the appendix unless they are challenged on appeal. In addition, it is now mandatory to provide an index to the documents contained in the appendix.

Advisory Committee Comment - 1998 Amendments

Rule 144 requires notice to be provided to the Attorney General when the constitutionality of a statute is challenged. The amended rule requires the party challenging the constitutionality to include in the appendix proof of compliance with the rule.

130.02 Respondent May File Appendix

If the respondent determines that the appendix filed by the appellant omits any items specified in Rule 130.01, only those omitted items may be included in an appendix to the respondent's brief.

(Amended effective for appeals taken on or after January 1, 1992.)

130.03 Party May File Supplemental Record; Not Taxable Cost

A party may prepare and file a supplemental record, suitably indexed, containing any relevant portion of the record not contained in the appendix. The original pagination of each part of the transcript set out in the supplemental record shall be indicated by placing in brackets the number of the original page at the place where the page begins. If the transcript is abridged, the pages and parts of pages of the transcript omitted shall be clearly indicated following the index and at the place where the omission occurs. A question and its answer may be contained in a single paragraph. The cost of producing the supplemental record shall not be a taxable cost.

Rule 131. Filing and Service of Briefs, the Appendix, and the Supplemental Record

131.01 Time for Filing and Service

Subdivision 1. Appellant's Brief. The appellant shall serve and file a brief and appendix within 30 days after delivery of the transcript by the reporter or after the filing of the trial court's approval of the statement pursuant to Rules 110.03 and 110.04. If the transcript is delivered by United States Mail, three days are added to the briefing period, which is measured from the date the transcript was mailed. If the transcript is obtained prior to appeal or if the record on appeal does not include a transcript, then the appellant shall serve and file a brief and appendix with the clerk of the appellate courts within 30 days after the filing of the notice of appeal, the petition which initiates the appeal, the appellate petition for declaratory judgment, or the appellate court order granting review.

Subd. 2. Respondent's Brief. The respondent shall serve and file a brief and appendix, if any, within 30 days after service of the brief of the appellant or the last appellant's brief, if there are multiple appellants, or within 30 days after delivery of a transcript ordered by respondent pursuant to Rule 110.02, subdivision 1, whichever is later.

Subd. 3. Reply Brief. The appellant may serve and file a reply brief within ten days after the later of the following:

(a) service of the respondent's brief or the last respondent's brief if there are multiple respondents; or
(b) service of the brief of an amicus curiae granted leave to participate under Rule 129.

Subd. 4. Supplemental Record. If a party prepares a supplemental record, the supplemental record shall be served and filed with that party's first brief.

(Amended effective January 1, 1999.)

Comment - 1983

Times for filing all briefs have been shortened.

This rule reduces the time for the filing of the appellant's brief from 60 to 30 days. The commencement of the briefing will depend upon a number of variables. If a transcript is ordered, the 30-day period begins with its delivery. If a transcript has been prepared prior to the appeal or the granting of a petition for review, or if no transcript is contemplated or necessary, the time runs from the date the notice of appeal was filed or the petition was granted. If a statement pursuant to either Rule 110.03 or 110.04 is submitted in lieu of a transcript, the time begins to run upon filing of the trial court's approval. The time for filing the respondent's brief has been shortened from 45 to 30 days. All parties now have equal time for the preparation of their briefs.

131.02 Application for Extension of Time

Subdivision 1. Motion for Extension. No extension of the time fixed for the filing of a brief will be granted except upon a motion pursuant to Rule 127 made within the time specified for the filing of the brief. The motion shall be considered by a justice, judge or a person designated by the appellate court, acting as a referee, and shall be granted only for good cause shown. Only an original of the motion shall be filed.

Subd. 2. Procedure. The date the brief is due shall be stated in the motion. The motion shall be supported by an affidavit which discloses facts showing that with due diligence, and giving reasonable priority to the preparation of the brief, it will not be possible to file the brief on time. All factual statements required by this rule shall be set forth with specificity.

(Amended effective March 1, 2001.)

Comment - 1983

This rule has been clarified to make explicit that a request for an extension of time to file a brief must be made within the time specified by rule or court order for the filing.

131.03 Number of Copies to be Filed and Served

Subdivision 1. Number of Copies. Unless otherwise specified by the appellate court, the following number of copies of each brief, appendix, and supplemental record, if any, shall be filed with the clerk of the appellate courts:

(a) In an appeal to the Supreme Court, 14 copies. Two copies of the 14 shall be unbound.

(b) In an appeal to the Court of Appeals, seven copies. One copy of the seven shall be unbound.

If counsel has elected, in the statement of the case form, to rely on memoranda submitted to the trial court, supplemented by a short letter argument, the number of copies required by this rule shall be filed with the clerk of the appellate courts.

Subd. 2. Service. Two copies of each brief, appendix, and supplemental record, if any, shall be served on the attorney for each party to the appeal separately represented and on each party appearing pro se. The clerk shall not accept a brief, appendix or supplemental record for filing unless it is accompanied by admission or proof of service as required by Rule 125.

(Amended effective January 1, 1999.)

Comment - 1983

Fourteen copies of all briefs, appendices, and supplemental records must now be filed in the Supreme Court and nine copies in the Court of Appeals. Two unbound copies must be supplied to either court.

Advisory Committee Comment - 1998 Amendments

This rule has been revised to make more clear the event from which the due date of the opening brief is calculated, the due date for responsive briefs, and the procedure for obtaining extensions of time to file briefs. The amended rule also reduces the number of copies of briefs that must be filed in the Court of Appeals. In instances where it is not necessary to await the preparation of a transcript, the time for the opening brief begins to run when the appellate proceedings are formally commenced. When review is not as a matter of right, but depends on some grant of leave from the appellate court, the time for the opening brief does not begin to run until that permission is granted.

If either party has ordered a transcript, the time for the opening brief runs from the date the transcript is delivered. Consistent with Rule 125.03, three days are added to the briefing period if the transcript was delivered by United States Mail. The revised rule makes that calculation clear.

Generally, service of appellant's brief begins the 30-day period for the filing of respondent's brief. If respondent has ordered a transcript pursuant to Rule 110.02, subd. 1, respondent's briefing period does not begin until delivery of the transcript, if the transcript is delivered after appellant's brief is served.

Specific grounds for any extension of a brief due date must be shown in the affidavit accompanying the motion. Extensions of time to file briefs are not favored.

The rule has also been changed to reduce the number of briefs to be filed in the Court of Appeals from nine to seven. While the rule previously required two unbound copies for the Court of Appeals, it now only requires one such copy. The number of bound and unbound copies required by the Supreme Court is unchanged.

Rule 132. Form of Briefs, Appendices, Supplemental Records, Motions and other Papers

132.01 Form of Briefs, Appendices, and Supplemental Records

Subdivision 1. Form Requirements. Any process capable of producing a clear black image on white paper may be used. Briefs shall be printed or typed on unglazed opaque paper. If a monospaced font is used, printed or typed material (including headings and footnotes) must appear in a font that produces a maximum of 10 1/2 characters per inch; if a proportional font is used, printed or typed material (including headings and footnotes) must appear in at least 13-point font. Formal briefs and accompanying appendices shall be bound together by a method that securely affixes the contents, and that is substantially equivalent to the list of approved binding methods maintained by the clerk of appellate courts. Methods of binding that are not approved include stapling, continuous coil spiral binding, spiral comb bindings and similar bindings. Pages shall be 8 1/2 by 11 inches in size with written matter not exceeding 6 1/2 by 9 1/2 inches. Written matter shall appear on only one side of the paper. The pages of the appendix shall be separately and consecutively numbered. Briefs shall be double-spaced, except for tables of contents, tables of authorities, statements of issues, headings and footnotes, which may be single-spaced. Carbon copies shall not be submitted.

Subd. 2. Front Cover. The front cover of the brief and appendix shall contain:

(a) the name of the court and the appellate court docket number, which number shall be printed or lettered in bold-face print or prominent lettering and shall be located one-half inch from the top center of the cover;
(b) the title of the case;
(c) the title of the document, e.g., Appellant's Brief and Appendix; and
(d) the names, addresses, and telephone numbers of the attorneys representing each party to the appeal, and attorney registration license numbers of the preparers of the brief.

The front cover shall not be protected by a clear plastic or mylar sheet.

If briefs are formally bound, the cover of the brief of the appellant should be blue; that of the respondent, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The cover of an amendment or supplement should be the same color as the document which it amends or supplements.

Subd. 3. Length Limit. Except for good cause shown and with permission of the appellate court, briefs, whether printed or typewritten, exclusive of pages containing the table of contents, tables of citations, any addendum containing statutes, rules, regulations, etc., and any appendix,

shall not exceed 45 pages for principal briefs, 20 pages for reply briefs, and 20 pages for amicus briefs, unless the brief complies with one of these alternative measures:

(a) A principal brief is acceptable if:
(1) it contains no more than 14,000 words; or
(2) it uses a monospaced font and contains no more than 1,300 lines of text.
(b) A reply brief is acceptable if:
(1) it contains no more than 7,000 words; or
(2) it uses a monospaced font and contains no more than 650 lines of text.
(c) An amicus brief is acceptable if:
(1) it contains no more than 7,000 words; or
(2) it uses a monospaced font and contains no more than 650 lines of text.

A brief submitted under Rule 132.01, subd. 3(a), (b), or (c) must include a certificate that the brief complies with the word count or line count limitation. The person preparing the certificate may rely on the word or line count of the word-processing software used to prepare the brief. The certificate must state the name and version of the word processing software used to prepare the brief, state that the brief complies with the typeface requirements of this rule, and state either:

(1) the number of words in the brief; or
(2) the number of lines of monospaced font in the brief.

Application for filing an enlarged brief shall be filed at least 10 days prior to the date the brief is due.

Subd. 4. Supplemental Records. Supplemental records shall be bound in separate volumes and shall, in all other respects, comply with this rule.

(Amended effective March 1, 2001.)

Comment - 1983

There are page limitations on all briefs.

The form of briefs, appendices, and supplemental records to be submitted has been changed. Commercial typographical printing is no longer required; instead any process capable of producing a clear black image on white paper is acceptable. Spiral spine binding is also no longer required. The appellate courts will publish criteria for permitted binding methods.

The color coding system introduced is only applicable if commercially produced briefs are submitted.

The appellant and the respondent's briefs are limited to 50 pages exclusive of tables of contents and authorities, addenda, and appendices. Reply briefs shall not exceed 25 pages and

briefs of amicus curiae are restricted to 20 pages. Any request to file an enlarged brief must be filed at least 10 days before the brief is due.

Advisory Committee Comment - 1998 Amendments

Rule 132.01, subd. 1 has been modified to make clear the requirement that the written material in briefs should appear on only one side of the paper. The Clerk of Appellate Courts maintains a list of approved binding methods and this list is available upon request.

Rule 132.01, subd. 2 has been modified in two respects. First, the rule has been re-written to make clear that in all cases where formal bound briefs are submitted, the color coding requirements apply. The rule has also been changed to eliminate the provision regarding the color of brief covers in the Supreme Court. The rule previously provided that the parties would use the same color covers as they did in the Court of Appeals. This caused considerable confusion among the bar, and the requirement was dropped in favor of a rule that consistently requires the opening brief of the appellant to be blue, the opening brief of the party responding to that brief to be red and reply briefs to be gray. Rule 101.02, subd. 6 defines "appellant" to mean the party seeking review, including relators and petitioners.

Minnesota Statutes, section 480.0515, subd. 2 (1996), requires documents submitted by an attorney to a court of this state, and all papers appended to the document be submitted on paper containing not less than ten percent postconsumer material, as defined in Minnesota Statutes, section 115A.03, subd. 24b. The statute also provides that a court may not refuse a document solely because the document was not submitted on recycled paper. Finally, subd. (3)(b) of the statute makes the entire section nonapplicable "if recycled paper is not readily available."

Subdivision 5 of this Rule regarding reliance upon trial court memoranda has been moved to Rule 128.01, subd. 2.

Advisory Committee Comment - 2000 Amendments

The rule has been amended to provide for an alternative measure of length of appellate briefs, based on word volume and not page count. This alternative allows parties to choose type size that is more readable than they might choose if endeavoring to satisfy the page limit requirement. The word volume measure has been derived from the analogous provisions of the Federal Rules of Appellate Procedure, and in general will not significantly alter the amount of text that a party may submit, regardless of the method chosen to determine brief length. The amended rule provides for a certification of brief length that will enable the appellate courts to verify that the brief complies with the rule. The rule also increases the minimum permissible font size for briefs and shortens the maximum permissible length of principal briefs that are not measured on a word or line count basis. These amendments only apply to formal briefs, not to motions, petitions for further review, or other pleadings.

132.02 Form of Motions and Other Papers

Subdivision 1. Form Requirements. Papers not required to be produced in the manner prescribed by Rule 132.01 shall be 8-1/2 by 11 inches in size with typewritten matter not exceeding 6-1/2 by 9-1/2 inches. Any process capable of producing a clear black image on white paper may be used. All material must appear in at least 11-point type, or its equivalent of not more than 16 characters per inch, on unglazed opaque paper. Pages shall be bound or stapled at the top margin and numbered at the center of the bottom margin. Typewritten matters shall be double spaced. Carbon copies shall not be submitted.

Subd. 2. Caption. Each paper shall contain a caption setting forth the name of the court, the title of the case, the appellate court docket number, and a brief descriptive title of the paper; and shall be subscribed by the attorney preparing the paper together with the preparer's address, telephone number, and attorney registration license number.

(Amended effective for appeals taken on or after January 1, 1992.)

Rule 133. Prehearing Conference; Calendar

133.01 Prehearing Conference

The appellate courts may direct the parties, or their attorneys, to appear before a justice, judge or person designated by the appellate courts, either in person or by telephone, for a prehearing conference to consider settlement, simplification of the issues, and other matters which may aid in the disposition of the proceedings by the court. The justice, judge or person designated by the appellate courts shall make an order which recites the agreement made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admission or agreement of counsel.

Comment - 1983

Prehearing conferences are still authorized by this rule, but it is anticipated that they will be held in very few cases and will be governed by internal operating procedures established by each of the appellate courts.

133.02 Calendar

No case shall be placed on the calendar for argument, except by special order of the appellate court, until there has been filed in the appellate court the appellant's brief and appendix and the respondent's brief. If either the appellant or the respondent fails to file the required brief within the time provided, or an extension of that time, the case shall be disposed of in accordance with Rule 142.

No changes may be made on the calendar except by order of the court on its own motion or in response to a motion filed by counsel. No case scheduled for argument shall be withdrawn after being placed upon the calendar except upon a showing of extreme emergency.

Comment - 1983

This rule indicates that no case will be scheduled for argument until all briefing is completed. The significant amendment is that once placed on the calendar, a case may not be rescheduled except upon motion or by the court and only upon a showing of extreme emergency.

133.03 Statement of the Case

Two copies of a statement of the case in the form prescribed by the appellate court shall be filed with the notice of appeal pursuant to Rule 103.01 or with the petition for the writ of certiorari or notice of appeal pursuant to Rules 115 and 116. The appellant shall serve the attorney for each party separately represented and each party appearing pro se and shall file proof of service with the clerk of the appellate courts.

Within ten days after receiving the appellant's statement, the respondent may serve on all parties and file with proof of service two copies of its statement clarifying or supplementing the appellant's statement. If the respondent agrees with the particulars set forth in the appellant's statement, no additional statement need be filed. If a party desires oral argument, a request must be included in the statement of the case. If a party desires oral argument at a location other than that provided by Rule 134.09, subdivision 2(a) to (e), the location requested shall be included in the statement of the case.

Comment - 1983

Any request for oral argument must be made in the statement of the case.

The former prehearing conference statement has now been replaced by a form entitled "Statement of the Case" as found in the appendix. The appellant must file 2 copies of it with the notice of appeal and 2 copies of the respondent's statement, if any, must be filed within 10 days of service. Any request for oral argument at a location other than that specified in Rule 134.09 must be included in the statement.

See Appendix for form of the statement of the case (Form 133).

Rule 134. Oral Argument

134.01 Allowance of Oral Argument

Oral argument will be allowed unless:

(a) no request for oral argument has been made by either party in the statement of the case required by Rule 133.03; or

(b) a party has failed to file a timely brief as required by Rule 128.02; or

(c) the parties have agreed to waive oral argument pursuant to Rule 134.06; or

(d) the appellate court, in the exercise of its discretion, determines that oral argument is unnecessary because:

(1) the dispositive issue or set of issues has been authoritatively settled; or

(2) the facts and legal arguments could be adequately presented by the briefs and record and the decisional process would not be significantly aided by oral argument.

The appellate court shall notify the parties when it has been determined that a request for oral argument has been denied. A party aggrieved by the decision may, within 5 days after the receipt of the notification and pursuant to Rule 127, request the court to reconsider its decision.

(Amended effective for appeals taken on or after January 1, 1992.)

134.02 Notice of Hearing; Postponement

The clerk of the appellate courts shall notify all parties of the time and place of oral argument. A request for postponement of the hearing must be made by motion filed immediately upon receipt of the notice of the date of hearing.

134.03 Time Allowed for Argument

Subdivision 1. Time Allowed. In the Court of Appeals, the appellant shall be granted time not to exceed 30 minutes and the respondent 20 minutes for oral argument. The appellant may reserve a portion of that time for rebuttal. In the Supreme Court, the appellant shall be granted time not to exceed 35 minutes and the respondent 25 minutes for oral argument. The appellant may reserve a portion of that time for rebuttal. If multiple parties to the appeal all wish to participate in oral argument, they shall mutually agree to divide the allotted time among themselves.

Subd. 2. Additional Time. If counsel is of the opinion that additional time is necessary for the adequate presentation of argument, additional time may be requested at the prehearing conference, if one is held, or by a motion filed in advance of the date fixed for hearing.

Subd. 3. Argument Limit. The appellate court may increase or reduce the time for argument on its own motion.

134.04 Order and Content of Argument

The appellant is entitled to open and conclude the argument. It is the duty of counsel for the appellant to state the case and facts fairly, with complete candor, and as fully as necessary for consideration of the issues to be presented. The appellant shall precede the statement of facts with a summary of the questions to be raised. Counsel should not read at length from the record, briefs or authorities.

134.05 Nonappearance of Counsel

If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appears for any party, the case will be decided on the briefs unless the court shall otherwise order.

134.06 Submission on Briefs

Subdivision 1. Waiver by Agreement. Oral argument once allowed may be waived by agreement of the parties and consent of the court, and the matter shall be deemed submitted on the briefs ten days after the completion of the briefing or on the date the appellate court consents to the waiver of oral argument, whichever is later.

Subd. 2. Case Submitted. When no oral argument has been requested, the case shall be considered submitted ten days after the completion of the briefing.

Subd. 3. Oral Argument Disallowed. If, pursuant to Rule 134.01(d), oral argument is not allowed, the case shall be deemed submitted to the court at the time of notification of the denial of oral argument.

134.07 Exhibits; Plats

Subdivision 1. Exhibits. If any exhibits are to be used at the hearing, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the hearing. Counsel will also see that all photographic exhibits are in court for the oral argument.

Subd. 2. Plats. In cases where a plat or diagram will facilitate an understanding of the facts or of the issues involved, counsel shall have in court a plat or diagram of sufficient size and distinctness to be visible to the court. The plat or diagram may be drawn on the courtroom blackboard.

134.08 Submission When Member of Appellate Court Not Present

Except in exigent circumstances, the oral argument shall be heard in the Court of Appeals before the full panel to which the case has been assigned or in the Supreme Court before the court sitting en banc. Whenever any member of the appellate court is not present at the oral argument of a case, the case shall be deemed submitted to that member of the court on the record and briefs. When, during the consideration of a case, there is a change in the personnel of the court, the case shall be deemed submitted to the new member or members on the record and briefs.

134.09 Oral Argument - Place of Argument

Subdivision 1. Supreme Court. Argument to the Supreme Court shall take place at the State Capitol or Minnesota Judicial Center in St. Paul or at any other place designated by the Supreme Court.

Subd. 2. Court of Appeals. Argument to the Court of Appeals shall take place in the Minnesota Judicial Center in St. Paul or as specifically provided in this rule.

(a) Argument in appeals from trial courts shall be heard:

(1) in appeals from trial courts in Hennepin and Ramsey Counties, at a session of the Court of Appeals in Hennepin or Ramsey County;

(2) in appeals from trial courts in other counties, at a session of the Court of Appeals in the judicial district in which the county is located at a location convenient to the place of trial or counsel.

(b) Arguments on writs of certiorari to review decisions of the Commissioner of Economic Security shall be heard as follows:

(1) if the claimant for benefits is a real party in interest in the proceedings and resides in Hennepin or Ramsey County, in one of those counties;

(2) if the claimant for benefits is a real party in interest in the proceedings and resides elsewhere in the state, in the judicial district of the claimant's residence;

(3) otherwise, at a place designated by the court.

(c) Arguments on petitions to review the validity of administrative rules, pursuant to Minnesota Statutes, section 14.44, shall be in Hennepin or Ramsey County.

(d) Arguments on petitions to review decisions of administrative agencies in contested cases, pursuant to Minnesota Statutes, sections 14.63 to 14.68, shall be heard:

(1) if the petitioner resides outside of Hennepin and Ramsey Counties, but within Minnesota, either at the session of the Court of Appeals in Hennepin or Ramsey County or at a session of the Court of Appeals in the judicial district in which the petitioner resides, as designated by the petitioner in the petition for review;

(2) if the petitioner resides in Hennepin or Ramsey County, or outside of Minnesota, at a session of the Court of Appeals in Hennepin or Ramsey County.

(e) In all other cases, any oral argument shall be heard at a session of the court in Hennepin or Ramsey County.

(f) Upon the joint request of the parties and with the approval of the court, an argument may be heard at a location other than that provided in this rule. The request pursuant to this subsection shall be included in the statement of the case.

(Amended effective January 1, 1999.)

Comment - 1983

This rule designates the place of oral argument in the Supreme Court and the Court of Appeals. In cases arising in counties other than Hennepin or Ramsey, the Court of Appeals will

hear argument within the judicial district in which the county is located, to the extent practical, at a site convenient to either the place of trial or counsel.

Advisory Committee Comment - 1998 Amendments

The rule has been amended to use the correct title of the Commissioner of Economic Security. The change is not intended to affect the meaning or interpretation of the rule.

Rule 135. En Banc and Nonoral Consideration by the Supreme Court

Cases scheduled for oral argument in the Supreme Court shall be heard and decided by the court en banc. Cases submitted on briefs may be considered by a nonoral panel of three or more members of the court assigned by the Chief Justice. The disposition proposed by the panel shall thereafter be circulated to the full court for review.

Rule 136. Notice of Decision; Judgment; Remittitur

136.01 Decision

Subdivision 1. Written Decision. (a) Each Court of Appeals disposition shall be written in the form of a published opinion, unpublished opinion, or an order opinion.

(b) Unpublished opinions and order opinions are not precedential except as law of the case, res judicata or collateral estoppel, and may be cited only as provided in Minnesota Statutes, section 480A.08, subd. 3 (1996).

Subd. 2. Notice of Decision. Upon the filing of a decision or order which determines the matter, the clerk of the appellate courts shall mail a copy to the attorneys for the parties and to the trial court. The mailing shall constitute notice of filing.

(Amended effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendments

This rule is amended to remove any specific form requirements for Court of Appeals decisions. It embodies the different types of opinions issued by the court. The rule removes the prohibition against citation of order opinions in subd. 1(b) and treats both unpublished opinions and order opinions identically in the new subd. 1(b). It permits citation of these opinions in accordance with Minnesota Statutes, section 480A.08, subd. 3 (1996).

136.02 Entry of Judgment; Stay

Unless the parties stipulate to an immediate entry of judgment, the clerk of the appellate courts shall enter judgment pursuant to the decision or order not less than 30 days after the filing of the decision or order. The service and filing of a petition for review to, or rehearing in, the

Supreme Court shall stay the entry of the judgment. Judgment shall be entered immediately upon the denial of a petition for review or rehearing.

Comment - 1983

Judgment will not be entered for 30 days after the filing of a decision or order to allow the filing of a petition for review to, or rehearing in the Supreme Court. In the event either petition is made and denied, judgment will be entered immediately.

136.03 Remittitur

Subdivision 1. From the Court of Appeals. The clerk of the appellate courts shall transmit the judgment to the trial court administrator when judgment is entered. If the Supreme Court grants a petition for review, the clerk shall transmit the entire record on appeal, one copy of each brief on file, and the decision of the Court of Appeals to the Supreme Court unless the order granting review directs otherwise.

Subd. 2. From the Supreme Court. When judgment is entered, the clerk of the appellate courts shall either transmit the judgment to the trial court administrator or notify the Court of Appeals if the matter is remanded to the Court of Appeals with special instructions.

(Amended effective for appeals taken on or after January 1, 1992.)

Rule 137. Enforcement Of Money Judgments

Subdivision 1. Cases Originating in the District Courts. Upon transmittal as provided by Rule 136.03, money judgments entered in the appellate courts are enforceable in the district court action as though originally entered in that court.

Subd. 2. Cases Not Originating in the District Courts. Appellate court judgments in cases not originating in the district courts are enforceable in the manner provided by the Uniform Enforcement of Foreign Judgments Act.

(Amended effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendments

This rule is amended to improve and clarify the procedures for enforcement of money judgments following appeal. Non-money judgments from the appellate courts are enforced by the district court on remand according to the direction of the appellate court, while money judgments are enforced by execution. The change essentially takes the appellate courts out of the business of issuing process for the enforcement of money judgments, and provides for the performance of those tasks by the district courts. A money judgment from the appellate courts, whether for costs, damages or any other form of relief, is treated like any other judgment in the district court and transmittal as provided for by Rule 136.03 acts as its entry. As with any other

district court judgment, an affidavit of identification of judgment debtor and docketing are required prior to enforcement.

Subdivision 2 of the rule is intended to obviate any confusion over the status of appellate court judgments entered in original or other proceedings not originating in the district courts. Enforcement of those judgments is available in the manner provided by the Uniform Enforcement of Foreign Judgments Act, Minnesota Statutes, sections 548.26-.33 (1996).

Rule 138. Damages for Delay

If an appeal delays proceedings on a judgment of the trial court and appears to have been taken merely for delay, the appellate court may award just damages and single or double costs to the respondent.

Rule 139. Costs and Disbursements

139.01 Costs

Unless otherwise ordered by the appellate court, the prevailing party shall recover costs as follows:

(1) upon a judgment on the merits, costs in the amount of $300;

(2) upon a dismissal, $10.

(Amended effective March 1, 2001.)

139.02 Disbursements

Unless otherwise ordered by the appellate court, the prevailing party shall be allowed that party's disbursements necessarily paid or incurred. The prevailing party will not be allowed to tax as a disbursement the cost of preparing informal briefs or submissions designated in Rule 128.01, subd. 2.

(Amended effective March 1, 2001.)

139.03 Taxation of Costs and Disbursements; Time

Costs and disbursements shall be taxed by the clerk of the appellate courts upon five days' written notice served and filed by the prevailing party. The costs and disbursements so taxed shall be inserted in the judgment. Failure to file and serve a notice of taxation of costs and disbursements within 15 days after the filing of the decision or order shall constitute a waiver of taxation, provided that upon reversal in the Supreme Court, a prevailing party in that Court who did not prevail in the Court of Appeals may file and serve a notice for costs and disbursements incurred in both appellate courts within 15 days after the filing of the decision of the Supreme Court, separately identifying costs and disbursements incurred in each court.

(Amended effective March 1, 2001.)

139.04 Objections

Written objections to the taxation of costs and disbursements shall be served and filed with the clerk of the appellate courts within 5 days after service of the notice of taxation. Failure to serve and file timely written objections shall constitute a waiver. If no objections are filed, the clerk may tax costs and disbursements in accordance with these rules. If objections are filed, a person designated by the appellate courts, after conferring with the appropriate appellate court, shall determine the amount of costs and disbursements to be taxed. There shall be no appeal from the taxation of costs and disbursements.

(Amended effective March 1, 2001.)

Comment - 1983

No appeal may be taken from the taxation of costs.

139.05 Disallowance of Costs and Disbursements

The appellate court upon its own motion may disallow the prevailing party's costs or disbursements or both, in whole or in part, for a violation of these rules or for other good cause. The prevailing party will not be allowed to tax as a disbursement the cost of reproducing parts of the record in the appendix which are not relevant to the issues on appeal.

139.06 Attorneys' Fees on Appeal - Procedure

Subdivision 1. Request for Fees on Appeal. A party seeking attorneys' fees on appeal shall submit such a request by motion under Rule 127. The court may grant on its own motion an award of reasonable attorneys' fees to any party. All motions for fees must be submitted no later than within the time for taxation of costs, or such other period of time as the court directs. All motions for fees must include sufficient documentation to enable the appellate court to determine the appropriate amount of fees.

Subd. 2. Response. Any response to a motion for fees shall state the grounds for the objections with specificity and shall be filed within ten days of the date the motion is served, unless the appellate court allows a longer time. On the court's own motion or the request of a party, a request for attorneys' fees may be remanded to the district court for appropriate hearing and determination.

Subd. 3. Applications for Pre-Decision Awards of Fees. Where allowed by law, a pre-decision application for fees, and any response to such an application, may be made by motion as provided by Rule 127.

(Adopted effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendments

The rule has been amended to provide a procedure for seeking attorneys' fees in the appellate courts. The amendments are procedural only, and do not provide a substantive basis for claiming fees on appeal.

Attorneys' fees on appeal may be allowed as a matter of substantive law or as a sanction. If a party seeks an award of attorneys' fees for work done on the appeal, as opposed to seeking appellate court affirmance of an award made below, the party should seek the award in the appellate court. Johnson v. City of Shorewood, 531 N.W.2d 509, 511 (Minn. App. 1995). The appellate court may choose to remand the issue to the trial court for a determination of the fees, see Richards v. Richards, 472 N.W.2d 162, 166 (Minn. App. 1991); Katz v. Katz, 380 N.W.2d 527, 531 (Minn. App. 1986), aff'd, 408 N.W.2d 835, 840 (Minn. 1987); or may refuse such a suggestion, and make the determination itself. See State Bank v. Ziehwein, 510 N.W.2d 268, 270 (Minn. App. 1994); Norwest Bank Midland v. Shinnick, 402 N.W.2d 818 (Minn. App. 1987).

The request for fees must include sufficient information to enable the appellate court to determine the appropriate amount of fees. This generally will include specific descriptions of the work performed, the number of hours spent on each item of work, the hourly rate charged for that work, and evidence concerning the usual and customary charges for such work, or if the basis for the fees is other than hourly, information by which the court can judge the propriety of the request. Where appropriate, copies of bills submitted to the client, redacted if necessary to preserve privileged information and work-product, may be submitted with the motion.

Rule 140. Petition for Rehearing in Supreme Court

140.01 Petition for Rehearing

No petition for rehearing shall be allowed in the Court of Appeals.

A petition for rehearing in the Supreme Court may be filed within 10 days after the filing of the decision or order unless the time is enlarged by order of the Supreme Court within the 10-day period. The petition shall set forth with particularity:

(a) any controlling statute, decision or principle of law; or
(b) any material fact; or
(c) any material question in the case which, in the opinion of the petitioner, the Supreme Court has overlooked, failed to consider, misapplied or misconceived.

No petition for reconsideration or rehearing of a denial of a petition for review provided by Rule 117, or of a petition for accelerated review provided by Rule 118, shall be allowed in the Supreme Court.

(Amended effective for appeals taken on or after January 1, 1992.)

Comment - 1983

No petition for rehearing is allowed in the court of appeals.

140.02 Service; Filing

The petition shall be served upon the opposing party who may answer within five days after service. Oral argument in support of the petition will not be permitted. Fourteen copies of the petition, produced and sized as required by Rule 132.01, shall be filed with the clerk. A filing fee of $100 shall accompany the petition for rehearing.

140.03 Stay of Judgment

The filing of a petition for rehearing shall stay the entry of judgment until disposition of the petition. It does not stay the taxation of costs. If the petition is denied, the party responding to the petition may be awarded attorney fees to be allowed by the court in the amount not to exceed $500.

Rule 141. (Reserved for Future Use.)

Rule 142. Dismissal; Default

142.01 Voluntary Dismissal

If the parties to an appeal or other proceeding execute and file with the clerk of the appellate courts a stipulation that the proceedings be dismissed, the matter may be dismissed upon the approval of the appellate court.

142.02 Default of Appellant

The respondent may serve and file a motion for judgment of affirmance or dismissal if the appellant fails or neglects to serve and file its brief and appendix as required by these rules. If the appellant is in default for 30 days and the respondent has not made a motion under this rule, the appellate court shall order the appeal dismissed without notice, subject to a motion to reinstate the appeal. In support of the motion, the appellant must show good cause for failure to comply with the rules governing the service and filing of briefs, that the appeal is meritorious and that reinstatement would not substantially prejudice the respondent's rights.

(Amended effective for appeals taken on or after January 1, 1992.)

142.03 Default of Respondent

If the respondent fails or neglects to serve and file its brief, the case shall be determined on the merits. If a defaulting respondent has filed a notice of review pursuant to Rule 106, the

appellant may serve and file a motion for affirmance of the judgment or order specified in the notice of review or for a dismissal of the respondent's review proceedings, subject to a motion to reinstate the review proceedings in accordance with the criteria specified in Rule 142.02.

(Amended effective for appeals taken on or after January 1, 1992.)

Rule 143. Parties; Substitution; Attorneys

143.01 Parties

The party appealing shall be known as the appellant, relator or petitioner and the adverse party as the respondent. The title of the action shall not be changed in consequence of the appeal.

(Amended effective for appeals taken on or after January 1, 1992.)

143.02 Death of a Party

If any party dies while an appeal is pending in the appellate court, the surviving party or the legal representative or successor in interest of the deceased party, shall file with the clerk of the appellate courts an affidavit showing the death and the name and address of the legal representative or successor in interest by or against whom the appeal shall thereafter proceed. If the deceased party has no representative, any party may inform the clerk of the appellate courts of the death and proceedings shall then be had as the appellate court may direct. If a party against whom an appeal may be taken dies after the entry of a judgment or an order in the trial court but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. If a party entitled to appeal dies before filing a notice of appeal, the notice of appeal may be filed by the decedent's personal representative or, if there is no personal representative, by the attorney of record within the time prescribed by these rules. After the notice of appeal is filed, substitution shall be effected in the appellate court in accordance with this rule.

(Amended effective for appeals taken on or after January 1, 1992.)

143.03 Substitution for Other Causes

If substitution of a party in the appellate court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed by Rule 143.02.

143.04 Public Officers

If a public officer dies, resigns or otherwise ceases to hold office during the pendency of an appeal or other appellate proceeding to which the officer is a party in an official capacity, the action does not abate and the successor in office is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of

substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(Amended effective for appeals taken on or after January 1, 1992.)

143.05 Attorneys

Subdivision 1. Admission Required; Admission Pro Hac Vice. All pleadings filed with the appellate courts must be signed by an attorney licensed to practice in this State, or admitted pro hac vice to practice before the appellate courts. No attorney may present argument to the appellate courts unless licensed to practice in this State or admitted pro hac vice to appear before the appellate court as provided for by this rule.

An attorney licensed to practice law in Minnesota may move for the admission pro hac vice of an attorney admitted to practice law in another state or territory. The motion shall be accompanied by an affidavit of the attorney seeking pro hac vice admission attesting that he or she is a member in good standing of the bar of another state or territory.

Subd. 2. Withdrawal of attorneys. (a) After a lawyer has appeared for a party in the appellate courts, withdrawal will be effective only if written notice of withdrawal is served on the client and all parties who have appeared, or their lawyers if represented by counsel, and is filed with the Clerk of Appellate Courts. The notice of withdrawal shall state the address at which the client can be served and the address and phone number at which the client can be notified of matters relating to the appeal and shall be accompanied by proof of service.

(b) Withdrawal of an attorney does not create any right to extend briefing deadlines or postpone argument.

Subd. 3. Certified students. A law student who is certified pursuant to the Minnesota Student Practice Rules may present oral argument only with leave of the appellate court. A motion for leave to present oral argument must be filed no later than ten days before the date of the scheduled oral argument. The student may participate in oral argument only in the presence of the attorney of record.

(Adopted effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendments

This rule is amended to provide explicitly for admission of out-of-state attorneys, withdrawal of attorneys, and appearance by certified students. Out-of-state attorneys may be admitted pro hac vice upon motion by a Minnesota attorney. Courts have the inherent power to establish rules for admission and regulation of lawyers appearing before them. This rule is consistent with that power. The Minnesota Legislature has specifically recognized that formal admission pro hac vice exempts the lawyer from any concern about the unauthorized practice of law. See Minnesota Statutes, section 481.02, subd. 6 (1996). This rule is generally consistent with the

rules used in the trial courts. See MINN. GEN. R. PRAC. 5, though that rule does not mandate a specific procedure.

The revised rule specifically prescribes when out-of-state lawyers must be admitted pro hac vice. Attorneys seeking to argue orally and those actually signing pleadings or briefs must be admitted; others appearing on the brief may wish to seek admission, but admission is not mandatory.

The rule does not require the motion for admission pro hac vice be brought at any particular time, but it should be brought sufficiently in advance of the time that a brief is to be submitted or argument is to be made so as to allow the appellate court to consider the motion and act upon it. Similarly, the rule does not provide for any responsive papers. In the unusual case that a motion for pro hac vice admission is opposed, the party opposing the motion should submit the opposition within the time for responding to any other motion.

Although the amended rule permits withdrawal upon notice to the court, counsel, and client, withdrawal should not impose any additional burdens on opposing parties or the court. It is imperative that the notice provide basic information to allow the court and opposing counsel to notify and serve the party whose counsel withdraws. This procedure is consistent with the procedure under MINN. GEN. R. PRAC. 108. Just as parties may elect to proceed pro se in the first instance, they may continue to represent themselves where their lawyers have withdrawn. This rule establishes the procedure for withdrawal of counsel; it does not itself authorize withdrawal nor does it change the rules governing a lawyer's right or obligation to withdraw in any way. The rule does not affect or lessen a lawyer's obligations to the client upon withdrawal. Those matters are governed by the Minnesota Rules of Professional Conduct. See MINN. R. PROF. COND. 1.16.

The rule makes it clear that the withdrawal of counsel does not, in itself, justify extension of the appellate deadlines or the postponement of argument. The existence of these impending deadlines should, however, be considered by counsel in determining if withdrawal can be effected without prejudicing the client. Withdrawal or substitution of counsel may be part of a set of circumstances justifying the exercise of the court's discretion to grant an extension or postponement.

The Minnesota Student Practice Rules allow certified law students to perform all functions that an attorney may perform in representing and appearing on behalf of a client. See MINN. R. STUDENT PRAC. 1.01 & 2.01. A motion is required to argue orally in the appellate courts.

Rule 144. Cases Involving Constitutional Questions Where State is Not a Party

When the constitutionality of an act of the legislature is questioned in any appellate proceeding to which the state or an officer, agency or employee of the state is not a party, the party asserting the unconstitutionality of the act shall notify the attorney general within time to afford an opportunity to intervene.

(Amended effective for appeals taken on or after January 1, 1992.)

Rule 145. Appendix of Forms

The sample forms contained in the appendix to these rules satisfy the requirements of the rules.

Comment - 1983

The appendix of forms is intended to guide counsel in the preparation of any application for relief in either of the appellate courts. For consistency of illustration the defending party has been designated as the appellant or petitioner in all forms. Accordingly, appropriate adjustment must be made when the plaintiff or claimant is the party seeking relief in an appellate court. The attorney registration license number of the attorney-preparer of each form is required to permit the computerized tracking of all cases in the appellate courts. While there is no other requirement for strict adherence to the forms, an inclusion of the information contained in them is viewed as a prerequisite to obtaining an informal decision from the appellate court.

Rule 146. Title

These rules may be known and cited as Rules of Civil Appellate Procedure.

Rule 147. Effective Date

These rules are effective on August 1, 1983 and govern all civil appeals and proceedings brought after that date.

Comment - 1983

The revised rules are effective on August 1, 1983, the effective date of Minnesota Statutes, section 480A.06, which establishes the jurisdiction of the Court of Appeals, and will govern all civil appeals and proceedings initiated in either the Supreme Court or the Court of Appeals after that date. Appeals and other proceedings pending in the Supreme Court on July 31, 1983, will be governed by the former rules.